(26,090)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 623.

UNION PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

L. A. LAUGHLIN.

IN ERROR TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

INDEX.

Byron S. Adams (Inc.), Printers, Washington, D. C., October 12, 1917.

a In the Supreme Court of the United States, —— Term 1917.

UNION PACIFIC RAILROAD COMPANY, Plaintiff in Error,

v.

L. A. LAUGHLIN, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Kansas City Court of Appeals of the State of Missouri:

Because in the record and proceedings, as also in the rendition of a judgment on a plea which is in the said Kansas City Court of Appeals of the state of Missouri before you, being the highest court of law and equity of the said state, in which a decision could be had in a suit between the Union Pacific Railroad Company, appellant, and L. A. Laughlin, respondent, wherein was drawn in question the validity of a treaty or statute of, or authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or authority exercised under said state, on the ground of their being repugnant to the Constitution, Treaties, or Laws of the United States, and
b the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a Treaty, or Statute of, or Commission held under the United States, and the decision was against the title, right, privilege, or exemption especially set up or claimed under said clause of the Constitution, Treaty, Statute, or Commission, a manifest error has happened to the great damage of the Union Pacific Railroad Company, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected and fully and speedy justice done to the party aforesaid in this behalf, do command you, after judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the — day of October, 1917, next, to the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the said Supreme Court, this 18th day of July, in the year of our Lord, One Thousand Nine Hundred and Seventeen.

JOHN B. WARNER, *Clerk,*
By C. J. MURRAY, *D. C.*

c UNITED STATES OF AMERICA, *sct:*

To L. A. Laughlin, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at the City of Washington within thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the Kansas City Court of Appeals of Missouri, wherein Union Pacific Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable James Ellison, Judge of the Kansas City Court of Appeals of Missouri, this 20th day of July, in the year of our Lord one thousand nine hundred and seventeen.

JAMES ELLISON, *Judge.*

[Endorsed:] United States Circuit Court, Western District of Missouri, Western Division. Union Pacific Railroad Co., Plaintiff in Error, vs. L. A. Laughlin. Citation. Filed July 20th, 1917. L. F. McCoy, Clerk.

d UNITED STATES OF AMERICA,
Western Division of the Western
District of Missouri, sct:

I hereby acknowledge due service of the within Citation this 27 day of July A. D. 1917.

L. A. LAUGHLIN,
Defendant in Error.

1 STATE OF MISSOURI, *sct:*

Be it remembered that on the 14th day of September A. D. 1916 there was filed in the office of the Clerk of the Kansas City Court of Appeals a transcript of an appeal wherein L. A. Laughlin, was respondent and Union Pacific Railroad Company was appellant which transcript is in words and figures as follows towit:

Be it remembered that on the 3rd day of the regular May Term, 1916 of the Circuit Court of Jackson County, Missouri, at Kansas City, the same being the 10th day of May 1916, the following proceedings were had and made of record before Hon. Harris Robinson, Judge of Division No. 9 in the cause entitled:

No. 95633.

L. A. LAUGHLIN, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, Defendant.

Now on this day this cause coming on regularly for trial, comes plaintiff in person and by attorney and comes defendant by its attorney and to try the issues herein joined comes the following jury towit;

John L. Douglass,
Martin D. Hull,
Simeon T. Yantes,
Nela P. J. Donner,
Henry W. Stahl,
James L. Ryan,
Peter A. Domville,
George F. Blakesle,
William S. McCarthy,
Charles C. Kellog,
James H. Dilion,
Alfred E. Dodson,

twelve good and lawful men from the body of the County, who were duly impaneled, tried and sworn, and after hearing the statements of counsel for the respective parties, the evidence the instructions of the Court and the arguments of counsel, the said jury retired
2 to the jury room to deliberate upon a verdict and after due deliberation returned into Court their verdict, which verdict is in words and figures as follows towit:

"We the jury find the issues for the plaintiff, and do assess his damages at two Hundred and Seventy Five Dollars ($275.00)"
W. S. McCARTHY, *Foreman.*

It is therefore ordered and adjudged by the Court that plaintiff do have and recover of and from the defendant and I. N. Watson and Raymond E. Watson sureties on the appeal bond herein, the said sum of Two Hundred and Seventy Five ($275.00) Dollars, together with the costs of this cause and have therefor execution.

On the 5th day of the May Term, 1916, the same being the 12th day of May, 1916, the following further proceedings were had and made of record, towit:

No. 95633.

L. A. LAUGHLIN, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, Defendant.

Now defendant files motion for a new trial in this cause, and defendant also files motion in arrest of the judgment in this cause.

On the 33rd day of the May Term, 1916, the same being the 15th day of June, 1916, the following further proceedings were had and made of record towit:

No. 95633.

L. A. LAUGHLIN, Plaintiff,

vs.

3 UNION PACIFIC RAILROAD COMPANY, Defendant.

Now defendant's motion for a new trial in this cause is by the Court overruled, to which ruling — the Court defendant excepts.

Now defendant's motion in arrest of the judgment in this cause is by the Court overruled, to which ruling — the Court defendant excepts.

In Vacation Time, the same being the 1st day of July 1916, the following further proceedings were had and made of record towit:

No. 95633.

L. A. LAUGHLIN, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, Defendant.

Now defendant files application and affidavit for an appeal herein to the Supreme Court of the State of Missouri.

And now defendant files its appeal bond herein in the penal sum of $750.00 with H. G. Kaill and I. N. Watson as sureties thereon.

On the 44th day of the May Term, 1916, the same being the 9th day of September 1916, the following further proceedings were had and made of record, towit:

No. 95633.

LOUIS A. LAUGHLIN, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, Defendant.

Now on this day the application of defendant for an appeal
4 herein, which was heretofore filed herein, is by the Court sustained and an appeal allowed to the Kansas City Court of Appeals, and defendant's appeal bond which was heretofore filed herein is by the Court approved, and defendant is by the Court given until on or before the 3rd day of the November Term 1916, of this Court in which to file its Bill of Exceptions herein.

STATE OF MISSOURI,
County of Jackson, ss:

I, James B. Shoemaker, Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the foregoing is a full, true and complete copy of the Judgment and Order Allowing Appeal in the cause entitled Louis A. Laughlin, plaintiff, against Union Pacific Railroad Company, defendant, as the same appears of record in my office in Book No. 902 at pages No. 53-55-91-107 and 111.

In Witness Whereof I hereunto set my hand and affix the seal of said Circuit Court at office in Kansas City, this 12th day of September, A. D. 1916.

Attest:
[SEAL.] JAMES B. SHOEMAKER, *Clerk*,
By E. M. NAIL, *Deputy*.

Afterwards on the 2nd day of March A. D. 1917 comes the said appellant by attorney and files herein its abstract of record together with statement brief and argument.

And afterwards on the 10th day of March A. D. 1917, comes the said respondent by attorney and files his statement brief
5 and argument which abstract of record, statement and brief are in words and figures as follows towit:

In the Kansas City Court of Appeals, March Term, 1917.

No. 12473.

L. A. LAUGHLIN, Respondent,

vs.

UNION PACIFIC RAILROAD COMPANY, Appellant.

Appeal from the Judgment of Division Number Nine, Circuit Court of Jackson County, Missouri, at Kansas City.

Hon. Harris Robinson, Judge.

Appellant's Abstract of the Record.

This is an action for an attorney's fee based on an attorney's lien, the allegation in general being that one Christ Xedes was injured while in the employ of the appellant company, and that said Xedes executed to respondent attorney a power of attorney to prosecute his cause of action if any against appellant company, later em-
6 ploying other attorneys who instituted suit for him and which was compromised and settled without the knowledge or con-

sent of respondent. Suit was originally instituted in the justice court of S. K. Layton, in Kaw Township, Jackson County, Missouri, where judgment was rendered for plaintiff (respondent herein) on November 30th, 1915. The cause was duly appealed to the Circuit Court of Jackson County, Missouri, at Kansas City, the transcript being filed in said court on December 13th, 1915.

The petition filed by the plaintiff in the justice court (omitting caption) is as follows:

"Statement.

Plaintiff states that he is and was at the time hereinafter stated an attorney and counsellor at law, duly admitted to practice in the courts of the State of Missouri and engaged in the practice of law at Kansas City, Missouri. That the defendant is and was at said times a corporation, duly organized and existing according to the laws of the State of Utah, and was engaged in the operation of a railroad through the State of Kansas and terminating in Kansas City, Missouri.

That one Christ Xedes having theretofore sustained injuries through the negligence of the defendant while in the employ of defendant at Onaga, in the State of Kansas, and having a subsisting cause of action against the defendant for damages for the injuries sustained as aforesaid, on the 12th day of November, 1913, em-
7 ployed the plaintiff as his attorney to prosecute for the said Christ Xedes a suit against the defendant to recover said damages, and on said day entered into a contract with the plaintiff by which he, the said Christ Xedes, agreed with the plaintiff to pay him for his services in and about the prosecution of said suit a sum equal to one-half of any and all sums which should be recovered in said suit or by compromise of the same.

That on the 17th day of November, 1913, plaintiff served a notice, in writing, upon the defendant that he had such an agreement with said Christ Xedes and stating therein the interest plaintiff had in such claim or cause of action.

That after the service of said notice, to-wit, on the 25th day of January, 1915, the defendant, without the knowledge or consent of this plaintiff, compromised and settled said claim or cause of action by paying to the said Christ Xedes the sum of $550.00, and the said Christ Xedes then and there released said claim or cause of action to the defendant. That by and through the said act of the defendant in settling and compromising said action, without the consent of the plaintiff, the plaintiff was deprived of his fee of one-half of the amount paid by defendant on said compromise and settlement, and of his lien upon the said cause of action allowed by the statutes of the State of Missouri.

Wherefore the plaintiff prays judgment against the defendant in the sum of $275.00, being one-half of the amount paid by the defendant to the said Christ Xedes, in settlement and compromise of said claim or cause of action, and for costs of suit.

(Signed) L. A. LAUGHLIN,
Attorney pro se."

8 The following entries appear of record in the office of the clerk of said Circuit Court:

Wednesday, May 3rd, 1916, the 45th Day of the March Term, 1916.

"Defendant files motion and affidavit for a continuance."

Said motion and affidavit for a continuance (omitting caption) is as follows:

"Motion for Continuance.

Now comes the defendant in the above entitled cause of action and moves the court for a continuance on account of the absence from the state of a material witness in said cause on behalf of the defendant, as more particularly appears by the facts set forth in the annexed affidavit.

(Signed) WATSON, GAGE & WATSON,
Attorneys for Defendant.

STATE OF MISSOURI,
County of Jackson, ss:

Raymond Watson, of lawful age, being first duly sworn, makes oath and says that he is one of the attorneys for the defendant in the above entitled cause of action; that one Chris Xedes, upon whom the defendant had relied as its chief witness for the defense of this case, is now out of the jurisdiction of this court and out of the United States and to the best of this affiant's knowledge and belief is in the Kingdom of Greece; that this action is brought by the plaintiff, who is a practicing attorney, to recover on an alleged attorney's lien alleged to have been filed by the plaintiff against the defend-

9 ant in an action for damages which the above named plaintiff contemplated bringing for the above named Chris Xedes against said defendant; that defendant expects to prove by the said Chris Xedes that he was injured on or about October 21, 1913; that shortly after he was injured he was approached by one D. C. Coliopoulos, who knew of his said injury and who presented to the said Chris Xedes a paper, which he, the said Chris Xedes, believed to be a statement of the facts relating to his injury and a statement that it was necessary for him to sign in order to obtain his pay check, part of which had been held up by the company after his injury; that the said D. C. Coliopoulos represented to the said witness Chris Xedes that the paper which he wished to have the said Chris Xedes sign was only a paper which contained a statement of the said injury and a request and demand upon the defendant for his pay check; that subsequent to signing said paper the said Chris Xedes learned that his signature was really attached to a written contract of employment which purported to employ the plaintiff, L. A. Laughlin, as his attorney to prosecute his action for damages against the Union Pacific Railway Company; that he does not read English nor does he understand it fluently when it is spoken; that he could not read the con-

tract which was presented to him for the reason that it was in English and that he relied upon the representations of the said D. C. Coliopoulos that the instrument was for the purposes only as above set forth when he signed the same.

This affiant further states that the said Chris Xedes will swear that he had not met L. A. Laughlin at the time he signed said
10 instrument nor had he ever heard of him nor did he know that he was signing a contract purporting to employ the said L. A. Laughlin or any other attorney or other person for the purpose of bringing an action for damages against the said defendant or for the purpose of settling or negotiating a settlement of his claim against the above named defendant; that when he learned the nature of the instrument which he had signed he notified the said D. C. Coliopoulos that he repudiated the same; that after he, the said Xedes, had signed said instrument under the misunderstanding and due to the misrepresentations of the said D. C. Coliopoulos he employed a firm of attorneys who commenced an action against the said Union Pacific Railway Company, the above named defendant; that said action was compromised and that he received from the Union Pacific Railway Company through the Federal Court a sum of money which he accepted in full, complete and final settlement of his claim against the said Union Pacific Railway Company; that he at no time employed the said L. A. Laughlin to commence an action against the Union Pacific Pacific Railway Company and that the said L. A. Laughlin had no authority whatsoever to file an attorney's lien against his said cause of action against said Union Pacific Railway Company.

Affiant further says that said Xedes is an uneducated day laborer; that said Coliopoulos is a man of greatly superior learning and intelligence to the said Xedes.

This affiant further says that the above named Chris Xedes had been until a short time ago, not to exceed two months, living
11 in Kansas City, Jackson County, Missouri, and in Topeka, Kansas; that the said Chris Xedes was in touch with the agents of the above named defendant and had promised and agreed that he would keep in touch with the agents of the above named defendants and would testify in said cause when wanted; that the agents of affiant did on the 2nd day of May, 1916, make a diligent search for the said Chris Xedes and learned upon credible statements of the friends and associates of the said Chris Xedes that he, the said Chris Xedes, had a short time ago, namely, within two months, sailed for Greece.

Affiant further states that the agents of the defendant learned that the said Chris Xedes had stated that he did not intend to live permanently in Greece and had expressed his intention of returning to this state shortly and that said friends further offered to provide the agents of this defendant with the address of the said Chris Xedes in Greece, so that this affiant has reasonable grounds to believe that the attendance of such witness will be procured at the next term or his deposition may be taken.

Affiant further says that he knows of no other person whose evidence or attendance he could procure at this term by whom he

can prove the facts as above set forth; that the above named witness is not absent by the connivance, consent or procurement of affiant and that this application is not made for vexation or delay but in good faith for the purpose of obtaining a fair and impartial trial.

(Signed) RAYMOND WATSON.

12 Subscribed and sworn to before me this 3rd day of May, 1916. My Commission expires Feby. 7th, 1917.

[SEAL.] (Signed) CONGER R. SMITH,
Notary Public."

Monday, May 8th, 1916, the 1st Day of the May Term, 1916.

"Now, on this day defendant admitting that absent witness would testify as set out in plaintiff's application for a continuance, heretofore filed, application for a continuance herein is by the court overruled."

Wednesday, May 10th, 1916, the 3rd Day of the May Term, 1916.

"Now on this day it is ordered by the court that the following cases be and the same are hereby assigned to the respective divisions as follows, to-wit:

95633. L. A. Laughlin vs. Union Pacific Railroad Co. To Div. 9."

Wednesday, May 10th, 1916, the 3rd Day of the May Term, 1916.

"Now on this day this cause coming on regularly for trial, comes plaintiff in person and by attorney and comes defendant by its attorney and to try the issues herein joined comes the following jury, to-wit: (here follows names of jurors), twelve good and lawful men from the body of the county, who were duly impanelled, tried and sworn, and after hearing the statements of counsel for the respective parties, the evidence, the instructions of the court and the arguments of counsel, the said jury retired to the jury room to deliberate upon a verdict, and after due deliberation re-
13 turned into court their verdict, which said verdict is in the words and figures as follows, to-wit:

'We, the jury, find the issues for the plaintiff, and do assess his damages at two hundred and seventy-five dollars ($275.00).'

'W. S. McCARTHY, *Foreman.*'

It is therefore ordered and adjudged by the court that plaintiff do have and recover of and from defendant and I. N. Watson and Raymond E. Watson sureties on the appeal bond herein, the said sum of two hundred and seventy-five ($275.00) dollars, together with the costs of this cause and have therefor execution."

Friday, May 12th, 1916, the 5th Day of the May Term, 1916.

"Now defendant files motion for a new trial in this cause, and defendant also files motion in arrest of the judgment in this cause."

Thursday, June 15th, 1916, the 33rd Day of the May Term, 1916.

"Now defendant's motion for a new trial in this cause is by the court overruled, to which ruling of the court defendant excepts.

Now defendant's motion in arrest of the judgment in this cause is by the court overruled, to which ruling of the court defendant excepts."

Saturday, July 1st, 1916, in Vacation, and at the May Term, 1916.

"Now defendant files application and affidavit for an appeal herein to the Supreme Court of the State of Missouri.

14 And now defendant files its appeal bond herein in the penal sum of $750.00, with H. G. Kaill and I. N. Watson as sureties thereon."

Said application and affidavit for an appeal (omitting caption) is as follows:

"Affidavit for Appeal.

STATE OF MISSOURI,
County of Jackson, ss:

I. N. Watson, being first duly sworn on oath states, that he is attorney of record for the defendant Union Pacific Railroad Company, and duly authorized agent of said company to make this affidavit; and he makes this affidavit for and on behalf of said defendant, Union Pacific Railroad Company. That this appeal prayed for in the above entitled cause is not made for vexation or delay, but because affiant believes the appellant is aggrieved by the judgment and decision of the court, in said cause.

The said defendant, therefore, prays the court to grant it an appeal to the Supreme Court of the State of Missouri, as by statutes in such cases made and provided.

(Signed) I. N. WATSON,
Agent for Union Pacific Railroad Company.

Subscribed and sworn to before me this 30th day of June, 1916.

(Signed) RAYMOND E. WATSON,
[SEAL.] *Notary Public, Jackson County, Mo.*

My commission expires February 28th, 1920."

Saturday, September 9th, 1916, the 44th Day of the May Term, 1916.

"Now on this day the application of defendant for an appeal herein, which was heretofore filed herein, is by the court sus-

15 tained and an appeal allowed to the Kansas City Court of Appeals, and defendant's appeal bond which was heretofore filed herein is by the court approved, and defendant is by the court given until on or before the 3rd day of the November Term, 1916, of this court in which to file its Bill of Exceptions herein."

Friday, November 10th, 1916, the 52nd Day of the September Term, 1916.

"Now on this day defendant presents to the court its Bill of Exceptions in this cause, and the court having examined said bill of exceptions and finding the same to be true and correct, the same is by the judge of this court signed, sealed and allowed, and it is ordered by the judge of this court that said bill of exceptions be and the same is hereby filed and made a part of the record of this cause."

Said Bill of Exceptions was marked "Filed Nov. 10, 1916, James B. Shoemaker, Clerk, by E. G. Bush, Deputy," and (omitting caption) is as follows:

"Bill of Exceptions.

"Bill of Exceptions on Behalf of Defendant.

Be it remembered, that at the regular March Term, 1916, of the Circuit Court of Jackson County, Missouri, at Kansas City, and on, to-wit, Wednesday the 10th day of May, 1916, the above entitled cause coming on for hearing before the Honorable Harris Robinson, Judge of Division Number 9, of said Circuit Court, the plaintiff appearing for himself; the defendant appearing
16 by Mr. Raymond E. Watson, *their* attorney, before a jury duly summoned and impaneled, and the following proceedings were had, to-wit:

(Here follows opening statement for plaintiff.)
(Here follows opening statement for defendant.)

Plaintiff's Evidence.

D. C. Coliopulos, called as a witness for plaintiff, testified, in substance, as follows:

Direct examination:

My name is D. C. Coliopulos. I live in Kansas City, Missouri, and have for about the last thirteen years. I was raised in Greece. I interpret Greek and Turkish in the courts. I knew Chris Xedes. I first met him in 1913. I got a letter from him from around Topeka, Kansas, where he was working asking me to assist his brother who was coming from Greece to land in New York, he then being at Ellis Island. I think it was some time in 1913, I first learned that

he was hurt. A man here in Kansas City, Peter Econnomi, came to me and told me that Chris Xedes was confined in the University Hospital, had sustained some injuries, had broken his ankle, and he told me to go there and see him. We went to the hospital together and he told me about his case and wanted to employ an attorney to prosecute his claim against the railroad company. I told him Mr. Laughlin would handle the matter for him and that I would go to Mr. Laughlin and get the power of attorney. That was all right,
17 and two or three days afterwards I went to Mr. Laughlin and told him about Chris Xedes' request, he filled out the power of attorney and gave it to me, and I took it to Xedes at the hospital, going then in company with James Econnomi. I explained fully to Xedes what he was signing. That is the power of attorney he signed. I witnessed it and brought it back to Mr. Laughlin, and in a week or ten days afterwards I received a letter from him. I received this letter from him dated November 16th on the 17th.

(By Mr. Watson:)

"Q. Where did you ever see his signature before?

A. I got two letters from him, and I also saw him sign his name in English in the instrument and I received another letter from him before he got hurt, from some point around Topeka.

By Mr. Watson: We object to the introduction of the letter written in Greek for the reason that none of us can translate it.

By the Court: Overruled.

To which ruling and action of the court the defendant then and there duly excepted and still excepts."

(By Mr. Laughlin:)

"Q. Can you translate this letter?

A. Yes, sir.

By Mr. Watson: We object to this witness translating this letter. We have no objection to any other person translating it.

By the Court: Overruled.

To which ruling of the court the defendant then and there duly excepted and still excepts."

18 "Q. I wish you would read it to the jury. A. (Reading) 'Kansas City, Missouri, November 16th, 1913. Hospital, Best Friend Demetri, (My first name is Demetri) Greetings: A few days ago I told Mr. Peter Econnomi (he is the man that came and informed me to go to the hospital) I wrote him to inform you, and I don't know whether you received my message or not, in regard to the case. Do not prosecute the railroad company yet before you receive new instructions from me (notification instead of instruction) as I do not desire to start suit before I am completely well and I wouldn't be in need of any man to assist me (he means he wants to be able to attend himself, go to the toilet etc. alone).'

By Mr. Watson: We object to his explaining.

A. I am just explaining what that meant.

By the Court: Overruled.

To which ruling of the court the defendant then and there duly excepted and still excepts."

"A. He says 'so to be sure I don't need anybody to assist me to walk or do anything (that is if he wants to get any water for instance, or go to the water closet he don't want us to prosecute the case before he is entirely well, so he can take care of himself without assistance from anybody else) (I am explaining as much as I can) (Reading) 'I want to be well so I can go out to the water closet without assistance of anybody, without anybody's assistance and then when I am well I will tell you now is the time for you to proceed, when I am completely well I will notify you to prosecute the matter. I give
19 you the power of attorney authorizing you, you asked me to give you the power of attorney' (he means in writing) 'and I did give it to you, now, whenever it is time, when I am ready, I will notify you to file the suit, without my instructions don't file the suit.' 'Don't file the suit as long as I am in the hospital, I remain your friend, devoted friend Chris Xedes.'

The foregoing document translated by the witness was thereupon marked Exhibit Number Two."

I received a letter from Chris Xedes after that; and the paper, Exhibit No. 3, is the one.

"EXHIBIT No. 3,

(Translated by witness as follows:)

'Hospital, Kansas City, Missouri,
November 29th, 1913.

FRIEND DEMETRI: You are informed by this letter, you receive the news through this letter from me that day before yesterday, Monday, they performed an operation on my foot and we will now see how it will come out. I have written you another letter a few days ago and don't know whether you received it or not, if you received it write me (so he would be informed I received his letter) and when I get up, with the help of God, then we will proceed with my case (he used the expression in Greek, he says "will begin to put the string in the stick," that is, "you will proceed with the case," that's what he means) 'as soon as you receive the present letter answer me at once. I remain your friend,

CHRIS XEDES.'"

20 I saw Xedes once or twice after I received these letters while in the hospital, and also when he came out of the hospital. We went over to your (Mr. Laughlin's) office. I heard about him

adjusting this claim maybe a year afterwards—about six or seven months ago. I remember of the serving of a lien in this case on November 17th, 1913.

"By Mr. Laughlin: It is admitted by counsel for defendant that exhibit number four, notice of lien which is offered in evidence, was served on the defendants on the 17th of November, 1913.

The document identified and offered in evidence is in words and figures following:

EXHIBIT No. 4

Notice of Attorney's Lien.

'To Union Pacific Railroad Company:

You are hereby notified that the undersigned attorney at law has an agreement with Christ Xedes for legal services rendered or to be rendered in and about the prosecution, settlement and adjustment of a certain claim or cause of action against you for personal injuries received by him while working for the Union Pacific Railroad Company at Onaga, Kansas, on October 11th, 1913.

The interest of the undersigned in said claim or cause of action according to the terms of said agreement is fifty per cent of whatever amount he obtains in settlement of said claim.

Kansas City, Mo., Nov., 17th, 1913.

(Signed) L. A. LAUGHLIN,
Attorney at Law.'"

21 "By Mr. Laughlin: The power of attorney offered in evidence and marked Exhibit Number One is as follows:

EXHIBIT No. 1.

'Power of Attorney.

This agreement made this 12th day of November, 1913, by and between Christ Xides, party of the first part, and L. A. Laughlin, Attorney at Law, party of the second part;

Witnesseth: Said first party hereby employs said attorney to collect by negotiation or suit his claim for damages for personal injuries received at Onaga, Kas. while working for the Union Pacific Railroad Company.

Said first party hereby agrees to give said attorney, as compensation for his services, fifty per cent of whatever amount said attorney obtains in settlement of said claim, either by suit or compromise.

It is further agreed, that in case the said first party shall settle or compromise said claim otherwise than through said attorney, then said attorney shall be entitled to a fee equal in amount to that received by said first party, but said fee shall, in no event, be less than One Hundred Dollars.

Said attorney hereby accepts said employment on the foregoing terms.

(Signed) CHRIST XEDES.

Witness:
D. C. COLIOPULOS.' "

22 Cross-examination:

I don't what you call handle law suits—I act as interpreter and interpret the Greek and Turkish languages between the attorney and the claimant. I recommend who I should think was the best man to handle the cases for the men. I recommend Mr. Laughlin occasionally now, and intend to continue in the future.

"Q. Then this expression used by you in your statement was erroneous that about eighteen months ago you went to work for Mr. Wheeler?

By Mr. Laughlin: That is objected to as immaterial.

By Mr. Watson: It tends to impeach his testimony, it is a violation of the law to snitch cases.

By Mr. Laughlin: We certainly object to the remarks of counsel.

By the Court: Sustained.

To which ruling of the court the defendant then and there duly excepted and still excepts."

(By Mr. Watson:)

"Q. I will ask you if you were not interested in the case of a Greek named Georgias Demetri against the H. & N. W. R. R. Co.?

By Mr. Laughlin: That is objected to as immaterial to the issues of this case.

By the Court: Sustained.

To which ruling of the court the defendant then and there duly excepted and still excepts."

"Q. I will ask you, Mr. Coliopulous, if you didn't have an agreement with Mr. Laughlin to divide his fee in the case of
23 Georgias *V* versus the Union Pacific, a case the Union Pacific settled with the man for $1750.00, and the suit was brought by Mr. Laughlin for $1750.00, did you divide the fee in that case?

By Mr. Laughlin: That is objected to as irrelevant and immaterial to this case.

By the Court: Suppose he says 'yes,' does that prove what you offer to prove.

By Mr. Watson: The last Section Acts of Missouri declares it a crime.

By the Court: The objection will be sustained.

To which ruling of the court the defendant then and there duly excepted and still excepts."

That is my card. I don't remember when I had those cards printed. I have not had the cards with D. C. Coliopulos with L. A. Laughlin on them since I became *came* correspondent with the National Herald of New York.

I went to the hospital at Xedes' request. If he says I misrepresented the facts in this statement to him, he is not only mistaken but he perjured himself. I explained the power of attorney to him fully in Greek. I don't know anything about why nothing was done in this case by myself or Mr. Laughlin for nine or ten months. I was not officing with Mr. Laughlin. I now represent the National Herald and receive my mail at Mr. Wheeler's office. I don't make a practice of receiving mail at the coffee house.

"Q. Why don't you receive it at your home then?

A. I use my residence for a home and not an office.

24 By Mr. Laughlin: We object to any further questions along this line.

By the Court: Sustained.

To which ruling of the court the defendant then and there duly excepted and still excepts."

I went to the hospital shortly after the accident—two or three weeks, or a month afterward. I went to see him before the contract was signed. That is Mr. Laughlin's handwriting. I took that down to the hospital, and had been there before this instrument was signed,—two or three days before. I went there the first time and we talked about the case, and he told me he wanted an attorney. I went to the office and got this instrument which Mr. Laughlin filled out, took it to the hospital and explained it to him and he signed it, and then I took it back to Mr. Laughlin. Mr. Laughlin pays me for my work according to the number of days I put in. In this case I don't think it will be very much,—I didn't put in very many days.

RAYMOND E. WATSON, called as a witness for plaintiff, testified, in substance, as follows:

Direct examination:

I am attorney for the defendant in this case. I was one of the attorneys interested in the suit of Christ Xedes against the Union Pacific Railroad Company. That case was tried without a jury before Judge Van-Valkenburg and judgment rendered for five hundred and fifty dollars, which amount was paid to the clerk of the court in settlement of that judgment. That was for the injury involved in this suit.

"By Mr. Laughlin: Plaintiff rests."

25 At the close of plaintiff's testimony the defendant filed the following demurrer, to-wit:

D-1.

The court instructs the jury at the close of plaintiff's case that the evidence adduced by plaintiff is not sufficient in law to support a verdict thereon, and you will therefore return a verdict for the defendant.

Which demurrer the court overruled.

To which action, order and ruling of the court the defendant then and there duly excepted and still excepts."

DEFENDANT'S EVIDENCE.

L. A. LAUGHLIN, called as a witness for defendant, testified, in substance, as follows:

Direct examination:

I am the plaintiff in this case. My impression is that I procured this lien or contract over a month after the accident,—whatever the dates show. I served a lien upon the railroad company immediately after that,—claiming fifty per cent. I contracted with Xedes that if he settled for five hundred and fifty dollars, he would have to pay me a like amount. The reason I never took any steps to collect this claim from Xedes was because after preparations were made to file suit, Xedes came up to the office one day with Coliopulos, and Xedes said he wasn't real strong yet and wanted to wait a little. The next I heard I met Mr. I. N. Watson on the street and he told me some other attorney had filed suit. This
26 was shortly after the suit was filed. I think Mr. Watson offered me two hundred dollars on this claim and said they were not going to pay any more than that. I told him he would remember I had a lien in the case, and he said all right, that no settlement would be made unless I was notified. I never paid any more attention to it until I heard the matter was settled. The first delay in my not doing anything in the matter was owing to the request of the plaintiff himself, and then I discovered there was a suit filed and I thought there was no use filing two suits. It is not a fact that as soon as Xedes knew what he had signed that he and a man named Golmis came to my office and notified me not to do anything in the case. I don't think Xedes and Golmis were ever up to my office together. I do not recollect Mr. I. N. Watson telling me that Xedes had notified him through Golmis that I had nothing to do with his case, but he may have told me. During the ten or twelve months after the accident and before suit was filed, I was simply waiting until this man would come in and say "file those papers." The service I performed in this case was getting the statements and making the preparations to file the suit. I had Xedes' statement. Coliopulos got one, but I took one up at my office. I don't know how much time I have devoted to the

case—I have devoted some time to it—I had several interviews with Mr. I. N. Watson with regard to settlement.

27 J. V. HOLMES, called as a witness for defendant, testified, in substance, as follows:

Direct examination:

My name is J. V. Holmes. I am a lawyer. I don't know whether the firm name was Thompson, Davis & Holmes in 1914, or not, but anyway it was Davis & Holmes. A man by the name of Xedes came to our office to get us to prosecute a cause of action for him. Mr. J. P. Golmis came there with him. I don't know exactly what time in the year 1914 that was. The only way I can tell is by referring to the affidavit Xedes made within a week of his coming to the office. That is the affidavit, and is dated May 14th, 1914. I think it was about May, 1914, that the suit was brought, and I think it was in May that he came to the office. Xedes stated that he had never seen Mr. Laughlin, he said he didn't know there was any attorney connected with the case. He further stated that he could not read English and he signed no contract whatever. I told Xedes and Golmis that we would have nothing to do with the case if there was any other attorney connected with it,—if there was he would have to see that attorney. When he told me it was Mr. Laughlin, I changed my attitude so far as his statement was concerned, because immediately thereafter he gave this statement to me in regard to just how the contract was obtained. A jury was waived in this case and it was tried before Judge Van Valkenburg and judgment entered for five hundred and fifty dollars. The amount was agreed upon—the plaintiff was present himself. Subsequent to that time, we went to the

28 office of the clerk of the court and got Xedes' money for him,—giving Xedes two-thirds, and our firm retained one hundred and sixty-five dollars for our services. The case was originally started in May in the Circuit Court of Jackson County, Missouri, at Independence; depositions were taken by our firm; several motions were prepared and handled by our firm, and the removal to the Federal Court was contested. We appeared in court at least four or five times.

"By Mr. Watson: The defendant next offers in evidence a certified transcript of the judgment rendered in this case in the United States District Court, which the stenographer has marked Exhibit B.

The document identified and offered in evidence, marked Exhibit B, is in words and figures following, to-wit:

Exhibit B.

In the District Court of the United States for the Western Division of the Western District of Missouri, Monday January 25th, 1915.

4235.

Christ Xedes

v.

Union Pacific Ry. Co.

This day this cause coming on for hearing the parties appearing by their respective counsel, thereupon in accordance with a stipulation filed herein, waiving a jury evidence is heard and the cause is submitted to the court, whereupon the court being fully advised in the premises finds the issues in favor of the plaintiff and assesses his damages in the sum of five hundred and fifty (550) dollars.

20 It is therefore considered, ordered and adjudged by the court that the plaintiff, Christ Xedes have and recover of the Union Pacific Railway Company the sum of five hundred and fifty (550) dollars together with his costs herein laid out and expended and have execution therefor.

On the margin of the above entry appears the following:

March 3rd, 1915.

Judgment and costs is this day satisfied in full and the receipt of $550 and costs is herewith acknowledged.

Attest:

JOHN B. WARNER, *Clerk.*
CHRIST XEDES,
DAVIS & HOLMES,
By JAY V. HOLMES.

(*Copy of Certificate Attached to Above.*)

United States of America, ss:

I, John B. Warner, Clerk of the District Court of the United States for the Western Division of the Western District, do hereby certify that the foregoing is a true copy of the judgment and the satisfaction thereof in the cause therein named, as fully as the same appears in my office.

Witness my hand as Clerk, and the seal of said Court.

Done at office in Kansas City, Missouri, this 9th day of May, 1916.

(Signed) JOHN B. WARNER, *Clerk,*
[SEAL.] By C. J. MURRAY, *D. C.*"

30 "By Mr. Watson: If the Court please I will now read from the testimony of Christ Xedes, omitting formal parts of this affidavit. I want to further explain to the jury, so they will understand the form of this statement by Mr. Xedes, Mr. Xedes being a Greek this is in a narrative form but it admits facts to which Mr. Xedes testified to.

By Mr. Laughlin: Admitting facts?

By the Court: That he testified as it is set down there and as you will read it.

A. By Mr. Watson—Yes, sir.

Read by Mr. Watson: (not marked exhibit):

STATE OF MISSOURI,
County of Jackson, ss:

Chris Xedes of lawful age, being duly sworn, upon his oath states that while in the employ of the Union Pacific Railway Company, on or about October 21st 1913, at or near Onaga, Kansas, he received certain injuries; that shortly after he was injured he was induced to sign a paper by D. C. Coliopulos, which paper he believed to be a statement of his injury and also believed that it was necessary for him to sign the paper in order to obtain his pay check. The affiant has since learned that his signature was really attached to a written contract of employment whereby he employed L. A. Laughlin to prosecute his case against the Union Pacific Railway Company.

This affiant further states that he at no time has employed an attorney; Mr. Laughlin is not his attorney and that at the pres-
31 ent time the affiant has full power to settle and dispose of this case as he may see fit without any attorney having a lien on such claim.

(Signed) CHRIST XEDES.

Subscribed and sworn to before me this 14th day of May, 1914.

(Blank) —— ——,
Notary Public."

Mr. I. N. WATSON, called as a witness for defendant, testified, in substance, as follows:

Direct examination:

My name is I. N. Watson. I am practicing law. I had charge of the matter of the case of Christ Xedes v. the Union Pacific Railway Company. Some time in 1914, Xedes came to my office with J. P. Golmis and stated that L. A. Laughlin had nothing whatsoever to do with his case, and I communicated to Mr. Laughlin what they told me. I told Mr. Laughlin what came up and what we said there,—What was said by these parties in my office. I had conversation with him in the first place—When this case came up, Mr. Laughlin had served notice of a lien on the company and he spoke to me about settling the case. I think he made a proposition of two hundred

dollars; and Xedes or someone had gone down to the claim agent and make the same proposition. While that was pending, these parties came in, and I had a conversation with them and then notified Mr. Laughlin that I could not deal with him any further in the matter. I told him I had gotten notice to that effect and I told him who I was dealing with and for him to see them. I also asked him
32 where he got his authority and if he had talked with this party, and he said Mr. Coliopulos had talked to him but he had not. At the time I first talked to him, I didn't know that Mr. Davis and Mr. Holmes had anything to do with it. Mr. Golmis came in and talked to me about making a settlement, but we couldn't reach an agreement,—they wouldn't accept two hundred dollars. I told them to think the proposition over. They asked for more money and I said no, and finally they went off and when I couldn't make a settlement with them, Mr. Davis and Mr. Holmes brought the suit. While the suit was pending, they took depositions; and then the suit was removed to the Federal Court, and they took depositions. I never heard of Mr. Laughlin being in the suit. Finally I told them what I would do. I told them I would not make any payment until the court heard the testimony, and then let the court enter a judgment that would be satisfactory and binding upon everybody, which they did; and the testimony was offered before the judge and he made the finding and we paid the money into court.

Cross-examination:

You did not notify me that these parties would not take two hundred dollars—you said they would settle for two hundred. That is my recollection. I do not remember meeting you and talking to you about this case and saying we had offered two hundred dollars and that was all we were going to pay, and also telling you that nothing would be done in the case until you were notified. I remember speaking to you shortly after this man came up
33 to my office. I told you the substance of what he told me. I told you that he said you had no authority to represent him and I told you that under those circumstances I could not deal with you any further. This thing had been running along for a long time and you made no claim to be in the case as an attorney. I told you to get busy and establish your claim. You didn't have anything to do with the case that I knew of, except the first time you told me. In the meantime, Mr. Golmis came and negotiated with me but we couldn't reach an agreement, and then they employed attorneys and brought suit and it was some nine or ten months after you talked to me before it was adjusted in the Federal Court. I told you that they had repudiated your authority. These other parties took the case in hand,—they took depositions. Mr. Golmis is not an interpreter for the Union Pacific; he does not employ laborers for the Union Pacific; and we do not use him in our cases. I have called him in for some cases and you agreed to it. You know he represents these Greeks and looks after them.

D. C. COLIOPULOS, called as a witness for plaintiff, in rebuttal (out of order) testified, in substance, as follows:

Direct examination:

"Q. You heard read this statement and this affidavit of witness filed by Mr. Watson in which Mr. Xedes—in which it is admitted that if Mr. Xedes were present here he would testify that there was presented to him a paper by you which he believed to be a
34 statement of the facts relating to his injury and a statement that it was necessary for him to sign in order to obtain his pay check. You never made any such statement or representation to Mr. Xedes, did you?

A. No sir. What would be the necessity of making such a statement and have him sign an instrument of this sort for him to obtain his check from the railroad company, he was in the hospital——

By Mr. Watson: We object to this argument by the witness and move to strike out the statement by Mr. Coliopulos.

By the Court: Part of his answer is not responsive, specify what part you want stricken out.

By Mr. Watson: I want the entire answer struck out.

By the Court: Overruled.

To which ruling of the court the defendant then and there duly excepted and still excepts."

I very explicitly interpreted to Xedes the contents of that power of attorney.

I. P. GOLMIS, called as a witness for defendant, testified, in substance, as follows:

Direct examination:

My name is I. P. Golmis. I was born in Greece. I have been in this country twenty-seven years, and am now employed with the Kansas City Southern Railway Company. It is about three years since I worked for the Union Pacific. About a year and a half ago I recollect coming to the law office of Watson, Gage & Watson
35 and bringing a man named Chris Xedes. I was not then working for the Union Pacific, and at the time was acting as interpreter for Xedes. I don't remember when it was I came up to your office. The way I came to go there was this: I met Xedes and another party outside and asked them where they were going. I talked to them in Greek. They said they were going up to settle a claim they had against the Union Pacific; and I knew both these parties and they asked me to go and help them out, so I went to your office and talked to Mr. Watson about settling this claim. I acted as interpreter for Xedes at the time. I think at that time that Xedes said he wanted something like eight hundred or a thousand dollars to settle this case. I think Mr. Watson told me at that time that Mr. Laughlin was in the case and he couldn't settle with Xedes.

Mr. Watson told me to tell Xedes that he was under the contract with Mr. Laughlin to handle the case, and I asked Xedes and he said he didn't know anything about it. He spoke something about Mr. Coliopulos calling on him a couple of times at the hospital, I think, but he didn't say he signed any contract or anything of the kind; and I asked him the second time to get it right, and he said he didn't know anything about it. They couldn't make a settlement with Mr. Watson and then they went out to hunt an attorney, and I believe I recommended Davis and Holmes. I told them I knew two nice young men and told them if they wanted an attorney, I could get them for him. I believe we all went up there together.

36 Cross-examination:

I was formerly in the employ of the Union Pacific for several years. At one time, I furnished laborers for the Union Pacific; and at that time acted as interpreter for the Union Pacific.

Redirect examination:

It is pretty close to three years since I have been employed with the Union Pacific—it was about a year and a half prior to the time I came into Mr. Watson's office. I quit working for the Union Pacific, had no connection with them, and did not represent them in any way, shape or form. I think once or twice since then they called upon me to interpret depositions, but I have not been working for the Union Pacific. I met these men by accident when they were coming up to your office. I think I met them at about 9th and Grand and they were going up to the office.

Recross-examination:

The other man with Xedes was George Kappalanis, a man that used to have the gang he worked with—he was the foreman of the section gang—assistant foreman of the extra gang.

Thereupon the defendant rested its case and this was all of the evidence offered by plaintiff and defendant in chief.

At the close of the entire evidence the defendant filed the following demurrer:

"The court instructs the jury at the close of the entire evidence in the case that under the pleadings and evidence your verdict must be for the defendant."

37 Which demurrer the court overruled, and to which action, order and ruling of the court the defendant then and there duly excepted and still excepts.

Thereupon the judge and counsel retired to the chambers of the judge to settle the instructions, where, outside of the hearing of the jury, the following transpired:

The plaintiff asked the court to instruct the jury as follows:

Plaintiff's Instruction No. 1, Given by the Court.

The court instructs the jury that if you find and believe from the evidence that Christ Xedes, knowing the contents of the same, signed the power of attorney offered in evidence, then he employed plaintiff as an attorney-at-law to prosecute his claim against the defendant Railroad Company on a contingent fee of 50 per cent of the amount recovered, and if you further find that plaintiff caused to be delivered a copy of the notice of his lien offered in evidence to the agent of the defendant at Kansas City and that thereafter, defendant settled said claim with said Christ Xedes by paying him the sum of five hundred and fifty ($550) dollars without the written consent of plaintiff, then your verdict should be for the plaintiff in the sum of two hundred and seventy-five ($275.00) dollars.

(Given.)

To the giving of said instruction the defendant at the time duly objected and saved its exception.

38 Defendant's Instruction No. 3, Refused by the Court.

The court instructs the jury that if you find and believe from the evidence that said Chris Xedes did employ the plaintiff, L. A. Laughlin, to bring and prosecute a cause of action against the Union Pacific Railroad Company for injuries received on or about the 21st day of October, 1913, and if you further find and believe from the evidence that the said Chris Xedes thereafter and before any suit was brought, discharged the said L. A. Laughlin and employed other attorneys, then you are instructed that plaintiff cannot recover on his contract as set forth in his petition and in no event can plaintiff recover more than the reasonable value for the services he reasonably rendered said Chris Xedes.

(Refused.)

Defendant's Instruction No. 4, Given by the Court.

The court instructs the jury that if they find and believe from the evidence in this case that a Greek by the name of Chris Xedes, was injured on the Union Pacific Railroad Company on or about the 21st day of October, 1913, and that shortly after he was injured he was approached by one D. C. Coliopoulos, who knew of his said injury, and if you further find that the said Coliopulos presented to the said Chris Xedes a paper which he, the said Chris Xedes, believed to be a statement of the facts relating to his injury and a statement which was necessary for him to sign in order to obtain his pay check, and if you further find that the said D. C. Coliopulos represented to the said Chris Xedes that said paper was a statement of the facts

39 relating to the manner of his injury which was necessary for him to sign before he could get his pay check and, that he did

sign this paper believing it to be necessary to obtain his pay check, a portion of which was unpaid at the time, if you find it was so unpaid at that time, and if you further find that said paper was in reality a written contract of employment written in English, employing the plaintiff to prosecute his action against the defendant, and that the said Chris Xedes could not read English, but had to depend upon the statement of the said D. C. Coliopulos for his knowledge of the contents of such paper, then you are instructed that the plaintiff cannot recover in this action and your verdict must be for the defendant.

(Given.)

Defendant's Instruction No. 5, Refused by the Court.

The court instructs the jury that if you find and believe from the evidence, the said Chris Xedes did employ the plaintiff, L. A. Laughlin, to bring suit for him against the defendant, the Union Pacific Railroad Company, yet if you further find and believe from the evidence that before any suit was brought, the said Chris Xedes discharged the said L. A. Laughlin and employed other counsel, who prosecuted a suit against the said defendant, in the United States District Court of the Western Division of the Western District of Missouri, at Kansas City, to a judgment in said United States District Court, and that the said Union Pacific Railroad Company paid the amount of said judgment to the clerk of the United States District Court at Kansas City, Missouri, in satisfaction of said judgment therein, then you are instructed that the defendant is not liable to the plaintiff in this action for any fees, and your verdict must be for the defendant.

(Refused.)

Defendant's Instruction No. 6, Refused by the Court.

The court instructs the jury that although you find and believe from the evidence in this case, the said Chris Xedes did enter into a contract with the plaintiff herein to bring and prosecute an action against the defendant, Union Pacific Railroad Company, yet if you further find and believe from the evidence that the said Chris Xedes discharged the said plaintiff herein before any suit was brought, and employed other counsel to bring and prosecute the action against the Union Pacific Railroad Company, then the plaintiff has no lien in this case under the Statutes of the State of Missouri and your verdict must be for the defendant herein.

(Refused.)

To which action, order and ruling of the court in refusing to give each and all of the instructions of the defendant to the jury the defendant at the time objected and excepted.

And to which action, order and ruling of the court in giving each and all of plaintiff's instructions to the jury, the defendant at the time objected and excepted.

41 *Court's Instructions.*

You are instructed that nine or more jurors may render a verdict for either party in this case. If all of you agree upon a verdict, your foreman alone will sign it, but if your verdict is rendered by nine or more, and less than twelve jurors, your verdict must be signed by all of the jurors who agree to it.

Forms of Verdict.

If all of you agree upon a verdict for the plaintiff, it may be in the following form;

"We, the jury, find the issues for the plaintiff and do assess his damages at $275 and no/100 dollars."

——— ———, *Foreman.*"

If a less number than twelve jurors render a verdict for the plaintiff it may be in the following form; "We, the undersigned jurors, find the issues for the plaintiff, and do assess his damages at 275 and no/100 Dollars."

If you all agree upon a verdict for the defendant; it may be in the following form;

"We, the jury, find the issues for the defendant."

——— ———, *Foreman.*"

If a less number than twelve jurors render a verdict for the defendant, it may be in the following form:

"We, the undersigned jurors, find the issues for the defendant."

Gentlemen, these forms are given for your guidance only and your verdict should be written on a separate paper, and not on one of these instructions.

To the giving of each of the foregoing instructions given by the court of its own motion the defendant at the time objected and duly excepted.

42 Under the evidence and the instructions given by the court, the jury returned the following verdict:

"We, the jury, find the issues for the plaintiff and do assess his damages at Two Hundred and Seventy-five Dollars ($275.00).

(Signed) W. S. McCARTHY, *Foreman.*"

And within four days thereafter, to-wit; on the 12th day of May, 1916, the defendant filed its motion for a new trial, which said motion is in words and figures following, to-wit:

In the Circuit Court of Jackson County, Kansas City, Missouri.

No. 95633.

L. A. LAUGHLIN, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, Defendant.

Motion for New Trial.

"Now comes defendant within four days after the rendition of the verdict in the above cause and judgment thereon, and moves the court to set aside said verdict and judgment and to grant it a new trial herein for the following reasons, to-wit:

First.

Because under the pleadings and evidence in this cause, the verdict and judgment should have been for the defendant herein.

Second.

Because the court erred in giving instruction Number One, given on behalf of the plaintiff, over the objection and exception of the defendant.

43

Third.

The court erred in giving each and every instruction, given on behalf of the plaintiff herein.

Fourth.

The court erred in refusing to give each and every instruction requested by the defendant and refused by the court.

Fifth.

The court erred in admitting illegal, incompetent and irrelevant evidence offered by the plaintiff herein.

Sixth.

The court erred in rejecting legal and competent evidence offered by the defendant herein.

Seventh.

Because under the undisputed facts in this case, the cause of action, existing in favor of Chris Xedes, arose in the State of Kansas, and

was brought by the firm of Davis and Holmes, attorneys for said Chris Xedes, in the Circuit Court of Jackson County, Missouri, and was thereafter removed to the United States District Court of the Western Division of the Western District of Missouri, at Kansas City, and was tried in said court and a judgment rendered therein in said cause and that in pursuance of Section 1695 of the United States *Compiled* Statutes of 1913, the defendant herein paid the judgment and costs to John B. Warner, clerk of the United States District Court, as provided by said section and by Section 1606 and that by Section 1607 the clerk of the United States District Court was
44 required to keep a complete and convenient index of the judgment; and that by Section 1608 the judgment in the United States Court was a lien upon all the property of the defendant herein; and that by Section 1644 of said statute, it was provided that all moneys paid into the United States Court in any cause pending therein, shall be deposited with the treasurer or a designated depositary of the United States, under the name and to the credit of such court; and that by Section 1645 of said statute, it is provided that no money deposited as aforesaid, shall be withdrawn except by order of the judge of said court, to be signed by such judge, and to be entered and certified of record by the clerk, and that the verdict herein imposed a liability upon the defendant with respect to the judgment, the payment of the judgment in the United States District Court and in violation of the statutes of the United States, aforesaid, and the verdict and judgment herein imposes terms and conditions to the judgment of the United States District Court in the above cause which is not provided for by the statutes of the United States and in so doing, this court has violated the constitution of the United States and has set at naught the Statutes of the United States in such case made and provided, and the defendant herein now asks the court to set aside the verdict and judgment herein as being contrary to the provisions of the United States Constitution and the laws of Congress above mentioned, and that said laws are exclusive and cannot be amended, annulled or added to, by any law of the State of Missouri.

45 **Eighth.**

The court erred in instructing the jury that the Statutes of Missouri, giving a lien to attorneys applied under the facts shown in this case, for the reason that the alleged cause of action in favor of Chris Xedes, arose in the State of Kansas and existed under and by virtue of the laws of the State of Kansas, if at all, and that the plaintiff herein, L. A. Laughlin, took no steps to invoke the laws of the State of Missouri to enforce said cause of action and existing in Kansas, but that the only steps taken in the courts of the State of Missouri in aforesaid cause of action to enforce the aforesaid cause of action, was taken by the firm of Davis and Holmes, at the instigation and direction of the said Chris Xedes; and that the lien laws of the State of Missouri do not provide and cannot provide any lien upon such a cause of action and existing in another state, where the attorney has not invoked the laws of the State of Missouri in enforcing said cause

of action which arose in said other State; and that under the pleadings and evidence in this case, the court erred in giving plaintiff's instructions and erred in refusing to give defendant's instructions at the close of plaintiff's case; that under the pleadings and evidence in the cause, the verdict and judgment should be for defendant.

Ninth.

The court erred in giving instruction Number One, given on behalf of plaintiff, in that the court gave extra territorial force and effect to the Statutes of the State of Missouri, giving a lien to
46 attorneys under certain conditions, for the reason that the alleged cause of action in favor of Chris Xedes arose in the State of Kansas and was prosecuted to a final judgment in the United States District Court, for the Western District of the State of Missouri, and that the United States District Court simply enforced a cause of action which existed in another state, and that the laws of the State of Missouri could not attach to said cause of action or to the judgment rendered thereon, in the United States District Court, and the court herein gave the law of the State of Missouri extra territorial force and effect and made said laws paramount to the Acts of Congress conferring judicial authority upon the United States District Court to hear and determine said cause of action, and to enforce the judgment in said action; and the court by its instruction to the jury has attached terms and conditions of the Missouri Statute, giving a lien upon said judgment that is not authorized by the United States Statutes and not recognized by the United States Statutes, and which lien was not enforceable in the United States District Court in the cause in which said judgment was rendered; and the court herein has violated the defendant's rights by imposing conditions upon the payment of said money into said court, which were not imposed by the laws of the United States, and has made defendant responsible for the payment of said money when by the Statutes of the United States, the defendant herein had no right or voice in the way or manner in which said money should be paid; and in rendering the judgment herein the court has imposed terms and conditions upon the
47 defendant not authorized by the Acts of Congress covering Federal procedure in the United States Courts.

Tenth.

The court erred in refusing to give the instructions asked by the defendant, which told the jury that if they found and believed from the evidence that before any suit was brought, the said Chris Xedes discharged the said Laughlin and employed other counsel to prosecute his suit against the said defendant, in the United States District Court of the Western District of Missouri, at Kansas City, to a judgment and that the said Union Pacific Railroad Company paid the amount of the said judgment to the clerk of the United States District Court in satisfaction of said judgment therein, then the defendant was not liable to the plaintiff for any fees and the

verdict should be for the defendant, and in so refusing to instruct the jury the court imposed terms and conditions upon the defendant not imposed by the judgment of the United States District Court and the aforesaid laws of the United States, and the court held the defendant herein to be responsible to whom said money was paid in settlement of said judgment, when under and by virtue of the Statutes of the United States, Sections 1644 and 1645 of the United States *Complied* Statutes of 1913, the defendant had no right or authority to direct how or to whom such money should be paid and that this court in so holding that defendant was required to see to whom the money was paid, imposed terms and conditions in violation of the above Statutes of the United States and imposed upon the defendant an obligation not imposed by
48 the Statutes of the United States but in violation thereof and required the defendant to do a thing that was in violation of the Federal Statutes above mentioned, and in so refusing to give said instructions requested by defendant, the court deprived the defendant of rights given under the statutes of the United States to pay said money into said court in discharge of its obligation in said cause of action, and imposed conditions upon the defendant herein not imposed by said judgment under the laws of the United States and has imposed other additional obligations to those imposed by the judgment aforesaid and herein the court violated the rights of the defendant under said laws of the United States aforesaid and defendant herein now asks that the said verdict and judgment thereon be set aside for the reason that it has deprived defendant of rights given by said Statutes and imposed obligations not imposed by said Statutes aforesaid, and defendant herein now invokes said Statutes aforesaid as reason why the court herein should grant it a new trial in said cause.

Eleventh.

Because the verdict is so excessive as to indicate passion and prejudice on the part of the jury herein.

Twelfth.

Because there is no evidence showing the value of the plaintiff's services in said action or that he ever rendered any services in said action to warrant a recovery under any law.

49 Thirteenth.

Because the Statutes of the State of Missouri if construed to apply to the facts shown in the evidence in this case become unconstitutional and void for the reason that it is given extra territorial force and effect and makes it extend beyond the jurisdiction of the State of Missouri and is therefor- violative of the Constitution of the United States in that it is seeking to create rights and obligations upon a cause of action arising and existing in another state.

Wherefore: The defendant moves the court to set aside the said verdict and judgment thereon for each and all of the foregoing reasons.

(Signed) WATSON, GAGE & WATSON,
Attorneys for Defendant."

And on the same day, to-wit; the 12th day of May, 1916, the defendant filed its motion in arrest of judgment, which motion is in words and figures following, to-wit:

In the Circuit Court of Jackson County, Missouri, at Kansas City, Division No. 9.

No. 95633.

L. A. LAUGHLIN, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, Defendant.

Motion in Arrest of Judgment.

"Now comes defendant within four days allowed by law, and moves the court to arrest the judgment herein for the following reasons, to-wit:

First.

The court erred in giving the instructions and improperly directing the jury with reference to the law of the case.

Second.

Because under the pleadings and evidence the verdict should have been for the defendant.

Third.

Because the verdict is excessive.

(Signed) WATSON, GAGE & WATSON,
Attorneys for Defendant."

And thereafter, and at the said May Term, 1916, to-wit; on the 15th day of June, 1916, said motion for new trial and said motion in arrest of judgment coming on to be heard, the parties present as before, after hearing the arguments the court took the matter under advisement, and;

Thereafter and at said May Term, 1916, to-wit; on the — day of ——, 1916, the court, after due consideration, overruled defendant's said motion for a new trial and said motion in arrest of judgment, to which action, order and ruling of the court the defendant then and there duly excepted.

And thereafter, to-wit, July 1st, 1916 (in vacation) the defendant filed its application and affidavit for appeal which said application and affidavit is in words and figures following, to-wit:

51 In the Circuit Court of Jackson County, Missouri, at Kansas City.

No. 95633.

L. A. LAUGHLIN, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, Defendant.

Affidavit for Appeal.

STATE OF MISSOURI,
County of Jackson, ss:

"I. N. Watson, being first duly sworn on oath states that he is attorney of record for the defendant Union Pacific Railroad Company, and duly authorized agent of said company to make this affidavit; and he makes this affidavit for and on behalf of said defendant, Union Pacific Railroad Company. That this appeal prayed for in the above entitled cause is not made for vexation or delay, but because affiant believes the appellant is aggrieved by the judgment and decision of the court in said cause.

The said defendant, therefore, prays the court to grant it an appeal to the Supreme Court of the State of Missouri, as by Statutes in such cases made and provided.

(Signed) I. N. WATSON.

Subscribed and sworn to before me this — day of June, 1916.

——— ———,
Notary Public, Jackson County, Mo.

My commission expires ———."

And the court thereupon, on the said — day of ———, 1916, allowed defendant an appeal of said cause from the judgment of this court to the Supreme Court of the State of Missouri, and the defendant was given by the court until on or before the — day of ———, 1916, to file its bill of exceptions therein.

52 Wherefore, the defendant prays the court to settle and allow this, its bill of exceptions, and that the same may be signed, sealed and made a part of the record in this cause, which is accordingly done this 10th day of November, 1916.

HARRIS ROBINSON,
Judge of said Circuit Court, Division Number Nine.

Bill of Exceptions Approved:
L. A. LAUGHLIN,
Attorney for Plaintiff.
WATSON, GAGE & WATSON,
Attorneys for Defendant.

Filed Nov. 10, 1916. James B. Shoemaker, Clerk, by E. G. Bush, Deputy.

On the 14th day of September, 1916, a certified copy of the judgment and order allowing an appeal herein to this court was filed herein, and is a part of the records of this court.

We hereby certify that the foregoing is a true and correct copy of the record and proceedings had in the above cause
WATSON, GAGE & WATSON,
Attorneys for Appellant.

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* * * * * * *

61 *Assignments of Error.*

(1) The court erred in overruling appellant's demurrer at the close of the plaintiff's case (Abs. 21).

(2) The court erred in overruling defendant's demurrer at the close of the whole case (Abs. 32).

(3) The court erred in giving plaintiff's instruction No. 1, which is set out on page 33 of the abstract.

(4) The court erred in refusing to give defendant's requested Instruction No. 3, which is set out on page 34 of the abstract.

(5) The court erred in refusing to give defendant's requested Instruction No. 5 which is set out in the abstract on pages 35 and 36.

(6) The court erred in refusing to give defendant's requested Instruction No. 6, which is set out in abstract p. 36.

(7) The court erred in giving the instruction, which told the jury that if they found the issues for the plaintiff, they should assess his damages at $275.00.

(8) The court erred in giving the instruction that if a less number of jurors than twelve found a verdict for plaintiff, they should assess his damages at $275.00.

(9) The court erred in overruling defendant's motion for new trial. For each and every reason set forth in said motion.

62 (10) The court erred in overruling defendant's motion in arrest of judgment.

(11) The court erred in holding that the statutes of the State of Missouri imposed a lien upon a judgment of the United States District Court, thereby violating the constitution of the United States and Acts of Congress, in that it imposed terms and conditions upon the judgment of the United States District Court contrary to the provisions of the Federal Constitution and Acts of Congress. That the said State Law cannot impose any terms or conditions upon a judgment rendered in the Federal Court under the Acts of Congress of the United States, and in so holding, the court has imposed amendments to the laws of congress governing judgments in the Federal Court, in violation of the constitution of the United States and the Acts of the Congress of the United States in such cases made and provided, and especially has it violated the Fourteenth Amendment to the Constitution of the United States in that it seeks by such pro-

cedure under the state statute to take the property of appellant without due process of law, and deny to it equal protection of the law.

(12) The court erred in holding that the attorney's lien of the State of Missouri applied to the facts shown in evidence, and authorized a judgment in the state courts for attorney's lien against the appellant when the evidence showed that the suit of Xedes against the appellant was removed to the Federal Court, and that a judgment was rendered in said Federal Court in said cause, and that the amount of said judgment was paid over to the clerk of said court, as
63 provided in section 1605 of the United States Compiled Statutes of 1913, and that the appellant paid the said sum of $550.00, amount of the judgment and costs to John B. Warner, clerk of the United States District Court, as provided by Sections 1606 and 1607 of the United States Compiled Statutes of 1913. By Section 1608 of the United States Compiled Statutes, of 1913, the judgment of the United States Court was made a lien upon all the property of the appellant herein, and that the Statutes of the State of Missouri could not impose any other or different lien upon a judgment of the United States Court for the reason that the legislature of the State of Missouri had no jurisdiction to legislate on such matter or impose any terms or conditions upon a judgment in the Federal Court rendered in pursuance to the Acts of Congress, and in imposing such a lien, the court violated the Acts of Congress aforesaid, and attempted to enforce a lien against the property of the appellant in violation of the Acts of Congress, thereby depriving appellant of its property without due process of law, and denying to it the equal protection of the law.

(13) The court erred in holding that the respondent herein had a lien against the appellant under the facts disclosed in this record, for the reason that by section 1645 of the United States Compiled Statutes of 1913, it is provided that no money deposited with the United States District clerk shall be withdrawn, except by order of the judge of said court, to be signed by such judge, and to be entered and certified of record by the clerk, and that as appellant had paid said money into said court, it had no further control over the
64 same or the payment thereof, to any individual and that under the instructions of the court herein and the verdict of the jury and judgment herein, the court has imposed a liability upon appellant with respect to the payment of the judgment of the United States District Court in violation of the Statutes of the United States aforesaid, and the verdict and judgment herein imposes terms and conditions upon the judgment of the United States District Court in the above cause, which is not provided for by the statutes of the United States, and in so doing, this court has violated the Constitution of the United States, and has set at naught the above Statutes of the United States in such cases made and provided, and appellant herein now asks the court to set aside the verdict and judgment herein as being contrary to the United States Constitution and the laws of Congress above mentioned.

(14) The court erred in holding that the attorney's lien law of Missouri attached to the judgment of the United States District Court aforesaid, and could be enforced in a separate suit in a justice

court of the State of Missouri, and that by holding that the lien provided in pursuance of the laws of the State of Missouri could apply and govern the judgments rendered in the court of another and separate sovereignty, gives extra-territorial force and effect to the laws of the State of Missouri, in violation of the Constitution of the United States, and the above Acts of Congress made in pursuance thereof, and herein the court erred to the prejudice of the appellant herein.

65 (15) The court erred in giving Instruction No. 1 given on behalf of plaintiff for the reason that the court by such instruction gave extra-territorial force and effect to the Statutes of the State of Missouri, governing attorney's liens in that the alleged cause of action in favor of Chris Xedes arose in the State of Kansas, and was prosecuted to a final judgment in the United States District Court for the Western District of Missouri, and that the United States District Court was simply enforcing a cause of action which then existed in another state, and that the laws of the State of Missouri could not attach to said cause of action which arose in another State or to any judgment rendered in the United States District Court, and in so doing, the trial court gave the law of the State of Missouri extra-territor-al force and effect and made said laws paramount to the Acts of Congress aforesaid, conferring judicial authority upon the United States District Court to hear and determine such cause of action, and to enforce the judgment in said action, and in so doing, the court violated defendant's rights guaranteed by the Constitution of the United States and the Acts of Congress, and is now seeking to take appellant's property without due process of law, and is denying to the appellant the equal protection of the laws, and the appellant herein now invokes the said Constitution of the United States and the Acts of Congress aforesaid as a shield and defense against any liability sought to be imposed by respondent herein.

66 *Points and Authorities.*

I.

1. Under the undisputed facts in this case, the lien law of the State of Missouri could not attach to the judgment rendered in the Federal Court so as to afford the respondent a lien against the appellant, and appellant's demurrer to the case should have been sustained.

Wait v. R. R. Co., 204 Mo. l. c. 503, and cases cited.
U. S. Compiled Statutes of 1913, Sections 1606, 1607, 1608, 1631, 1633, 1644 and 1645.
Hyde v. Stone, 20 How. (U. S.) l. c. 174.
Suydam v. Broadnax, 14 Pet. 73.
Union Bank of Tenn. v. Jolly's Admrs., 18 How. (U. S.) 503.
Ableman v. Booth, 21 How. (U. S.) 506.
Johnson v. Schulten, 104 U. S. 410.

II.

2. Congress has enacted the foregoing statutes establishing the mode of procedure in the Federal Court, and the laws of the state cannot change, alter, amend, add to or detract from said laws and jurisdiction of the Federal Court, or add anything to or detract anything from the judgments rendered in said court.

See authorities under Point 1.

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III.

3. The lien law of the State of Missouri can have no extra-territorial force and effect upon a cause of action arising in another state and prosecuted to a judgment in a foreign jurisdiction such as the Federal Courts are to the State Court of Missouri.

Piatt and Marks v. Swift & Co., 188 M. A. 588.

IV.

4. The court erred in giving the plaintiff's instruction No. 1.

First. This instruction takes from the plaintiff the right to discharge his attorney, notwithstanding he may have an excellent cause for doing so. Such a construction of the Attorney's Lien Act renders the same unconstitutional and void.

Second. Under Section 964, R. S. Mo. 1909, the contract between the attorney and client must be reasonable.

Third. This contract was unreasonable on its face, and was therefore null and void, and would not support an attorney's lien.

Morton v. Forsee, 248 Mo. l. c. 427.

In the matter of Fitzimmons, 174 N. Y. l. c. 23.

Randson v. Wood, 98 N. Y. S. l. c. 284.

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V.

5. This contract is void because it is unconscionable and puts a penalty upon the injured party if he settles without the consent of the attorney. It thereby enables the attorney to hold up his client and force him to forego any settlement he wishes to make, and if he settles without the attorney's consent, it takes away everything he receives in such settlement. Such conditions render the contract null and void.

Kansas Elevator Company v. Rachel Service, 77 Kans. 316, 94 Pac. 262.

Ry. Co. v. Ackley, 14 L. R. A. 1107, 49 N. E. 262.

Huber v. Johnson, 68 Minn. 74, 64 Am. St. Rep. 456, 70 N. W. 806.

Boardman v. Thompson, 25 Iowa, 487.

Weller v. Jersey City H. & P. St. Ry. Co., 68 N. J. Eq. 659, 61 Atl. 450.

Davis v. Chase, 159 Ind. 242, 95 Am. St. Rep. 294; 64 N. E. 88, 853.
Key v. Vattier, 1 Ohio, 132.
Brown v. Ginn, 66 Ohio St. 316, 64 N. E. 123,
Stewart v. Welch, 41 Ohio St. 483.
In Re Snyder, 190 N. Y. 56; 82 N. E. 742, 14 L. R. A. N. S. 1101, and cases cited.
Boardman v. Thompson, 25 Iowa, 487.
Murray's Estate, 2 Pa. Dis. Repts. 681.
Weakley v. Hall, 13 Ohio 167, 42 Am. Dec. 194.
Davey v. Ins. Co., 78 Ohio State 256, 85 N. E. 504.

VI.

6. The court erred in refusing to give instructions 1, 2, 3, 5 and 6 requested by the appellant.
See the foregoing authorities.

* * * * * * *

100 Afterwards on April 5th A. D. 1917, the following further proceedings were had and entered of record towit:

No. 12473.

L. A. LAUGHLIN, Respondent,

vs.

UNION PACIFIC RAILROAD COMPANY, Appellant.

Now at this day comes the said appellant by attorney and after oral argument herein submits said cause to the Court on briefs, and said respondent also submits said cause to the Court on briefs.

Afterwards on the 11th day of June A. D. 1917, the following further proceedings were had and entered of record towit:

No. 12473.

L. A. LAUGHLIN, Respondent,

vs.

UNION PACIFIC RAILROAD COMPANY, Appellant.

Now at this day come the parties aforesaid by their respective attorneys and the Court here being sufficiently advised of and concerning the premises doth consider and adjudge that the judgment aforesaid, in form aforesaid by the said Circuit Court of Jackson County rendered be in all things affirmed and stand in full force

and effect. It is further considered and adjudged by the Court that the said respondent recover against the said appellant costs
101 and charges herein expended and have therefor execution.

Opinion.

In the Kansas City Court of Appeals, March Term, 1917.

No. 12473.

L. A. LAUGHLIN, Respondent,

vs.

UNION PACIFIC RAILROAD COMPANY, Appellant.

Appeal from Jackson Circuit Court.

A Grecian named Xedes was injured by defendant. On the recommendation of a fellow countryman, named Coliopolus, he employed plaintiff to bring an action against defendant for damages. He made such employment in writing; agreeing to give plaintiff fifty per cent of what he recovered, or of any sum he should get in a compromise, or other settlement of the claim, but at all events plaintiff was to receive one hundred dollars.

For some undisclosed reason, Xedes employed other attorneys and they brought an action for him in the State court which was afterwards removed to the Federal court at Kansas City, Missouri. The case was tried in the latter court and judgment rendered for $550 and the money paid by defendant to the Clerk of that court, from whom it was drawn by the attorneys who brought the suit and the judgment satisfied. Plaintiff had no notice or knowledge of the judgment or that it was paid until long afterwards.

After plaintiff's employment, and before the other attorneys had been employed to supplant him, he served written notice on defendant of his agreement with Xedes and of his claim of an attorney's lien for a certain per cent of whatever amount he obtained in settlement of said claim.

102 Plaintiff did nothing under his employment, other than prepare for it, for the reason that he was prevented by the action of Xedes in employing other attorneys.

After the notice of lien was served Xedes attempted a settlement with defendant's attorneys who told him plaintiff's claim and refused to settle with him.

Afterwards plaintiff brought this action before a justice of the peace, to recover $275, being one half of the judgment obtained. He prevailed both in the justice and the circuit court on appeal, and defendant has brought the case here.

Defendant makes earnest effort to show that as the judgment was rendered in the Federal court, the amount paid in to the Clerk and by him paid out to the attorneys of record representing the plaintiff in the judgment, the present Xedes or plaintiff can, have no cause of

action; it being insisted, in this respect, that an attorney's lien under the State law cannot attach to a judgment or proceeding in a Federal court, that court being regarded as foreign to the State. We think the point not well made. The lien is a substantial right which the attorney has vouchsafed to him by the local State law, and it will be enforced in the Federal court for such State, as any other claim arising under a State law. It has been so recognized: Brown vs. Morgan, 163 Fed. 395; Cain vs. Hockensmith, W. & C. Co., 157 Fed. 992. And the removal, of a case from the State of the Federal court was not allowed to affect an attorney's lien allowed by the law of Alabama: Central Railroad vs. Pettus, 113 U. S. 116.

In view of the fact that this case was brought in a court other than the one rendering the judgment, and in which court that judgment was satisfied without the consent or knowledge of this plaintiff whose claim, if not now based upon our attorney's lien statute (Sec. 965, R. S. 1909) has that statute for its support, it is proper that
103 we consider the propriety of the remedy sought by plaintiff.

The statute, after giving the lien and providing for notice, proceeds to declare, that any defendant "who shall, after notice served as herein provided in any manner, settle any claim, suit, cause of action, or action at law with such attorney's client, before or after litigation instituted therein, without first procuring the written consent of such attorney shall be liable to such attorney for such attorney's lien as aforesaid upon the proceeds of such settlement, as per the contract existing as hereinabove provided between such attorney and his client."

It is decided in Wait vs. Railroad 204 Mo. 491, 502; O'Connor vs. Transit Co. 195 Mo. 622, 643; Taylor vs. Transit Co., 198 Mo. 715 Curtis vs. Railroad, 118 Mo. App. 341; Yonge vs. Railroad, 100 Mo. App. 235, and Young vs. Renshaw, 102 Mo. App 173, that if a settlement be made before judgment without the lienor attorney's consent, he need not press the suit forward to establish his lien but may have an independent action against the settling defendant "not possibly, strictly to enforce the lien, but against him who defeated the lien, for the value thereof." In the Wait case, at page 502 of the report, it is stated by the Supreme Court, that it had not been decided whether an independent action could be maintained against a settling defendant after final judgment.

But we believe the trend of that case, and the others cited is along a line which leads to the conclusion that an action lies after judgment against the settling defendant. In fact we understand it to be, in effect, so announced in the Wait case at page 502 of the report. It is true that this plaintiff might have elected to go into the Federal court and asked to have the satisfaction of the judgment set aside and his rights protected. If he had, doubtless that court as
104 in any other case involving the enforcement of local laws, would have taken action on his complaint. But after the judgment was entered and satisfied, the complaining attorney was not confined to a request to the court which rendered the judgment, to set aside the satisfaction and he could maintain his claim in some

other court in a direct action against the defendant for deforcement of his lien. Other objections to the judgment are not considered substantial and it is accordingly affirmed. All concur.

JAMES ELLISON.

Afterwards on the 20th day of June A. D. 1917 comes the appellant by attorneys and files its motion for a rehearing which is in words and figures as follows towit;

In the Kansas City Court of Appeals, March Term, 1917.

No. 12473.

L. A. LAUGHLIN, Respondent,

vs.

UNION PACIFIC RAILROAD COMPANY, Appellant.

Motion for Rehearing.

Now comes the appellant and moves the court to grant it a rehearing herein, for the following reasons;

1. That questions decisive of this cause, and duly presented by brief for appellant, have been overlooked by the court.

2. That the decision herein rendered is in conflict with the express provisions of the attorney's lien law, which expressly provides that, where judgment has been obtained, it shall attach only to the judgment, and the judgment upon which the lien should attach would be the Federal judgment, which the record shows was satisfied
105 by the defendant paying the same to the Clerk of the United States District Court, and to give to said statute of the State of Missouri the effect to create a liability and a right of action against the defendant under such circumstances, renders the said law void and unconstitutional, in that it takes the appellant's property without due process of law, and denies to it the protection given by the Acts of Congress, and that when it paid money to the Clerk of the United States Court in satisfaction of said judgment it cannot be held liable to any attorney to again pay any part of said sum of money; and the opinion herein rendered, which gives the attorney's lien law of the State of Missouri such force and effect, renders such statute void, in that it takes the appellant's property without due process of law, and seeks to impose additional conditions upon the appellant which are not imposed by the Acts of Congress which provide the force and effect which shall be given to judgments in the Federal court.

3. The opinion herein takes from the appellant the right of protection in paying money to the Clerk of the United States District Court in satisfaction of a judgment entered therein, and to satisfy said judgment in the way and manner provided by the Acts of Congress; and that the records in this case conclusively show that the appellant paid to the Clerk of the United States District Court the amount of the judgment and costs taxed against it in said cause, and

that the statute of the State of Missouri giving liens to attorneys has no application to such state of facts and cannot deprive a party litigant from the protection afforded by the United States Statutes in paying money to the Clerk United States District Court, and in so construing such statute the court has imposed a condition upon appellant not contained in the judgment in said United States District Court, and has deprived the defendant of the protection given by the United States statutes in the payment of a judgment to the
106 Clerk of the United States District Court, which contention was urged in our brief in this court, and which has been overlooked and not considered by the court herein.

4. That the decision herein violates all decisions of the Supreme Court of this State and the Federal Court, in holding that a party is not protected in the payment of a judgment and costs, rendered against him or it, to the proper officer of said court and obtaining satisfaction as provided by law, and the opinion herein under the facts in this cause deprive a litigant of all protection of paying money into a court of record and having a judgment satisfied therein as provided by law, and in so construing the attorney's lien act to give a right of action against a litigant who has already paid the money into the court, in pursuance of the statutes of the State or the Acts of Congress, the court deprives the litigant of all protection afforded by law, and takes his property without due process of law and denies to the litigant the equal protection of the law, all in violation of the Fourteenth Amendment of the Constitution of the United States, and appellant here and now invokes the said Fourteenth Amendment of the Constitution of the United States as protection against any such law which deprives it of such protection.

5. The opinion rendered herein is in conflict with former decisions of the Supreme Court, in that the Supreme Court has never held that attorney's lien law would afford an attorney an independent right of action against the party who had paid money into a court of record in satisfaction of a judgment, as required by the law of the State, and that to so hold the law to be, the court makes the attorney's lien law conflict with the other statutes governing the payment of money into court and the enforcement of judgments in a court.

6. The attorney's lien act expressly contemplates a settlement between the attorney and client out of court, and has no applica-
167 tion to a case where the defendant pays money into the court and where it is distributed by the officer of that court. No decision can be found anywhere holding that such a law applies under such conditions. The very act itself provides that the attorney's lien shall not be affected by any settlement between the parties before or after judgment. It does not apply where a judgment is rendered in court and the party pays the money to the officer of the court. If this is the law, then, where a judgment is entered and a defendant pays money under execution to the sheriff, he would still be liable to pay over to plaintiff's attorney, although the full amount was collected under execution. This is the construction this court puts upon the attorney's lien act.

7. The construction given to this attorney's lien act by the court in

this case deprives the appellant of all protection afforded by the Acts of Congress in satisfying a judgment rendered in a Federal court, acting under the laws of Congress, and in so giving this statute such construction, the court has imposed a liability upon the appellant herein that was not imposed by the judgment of the Federal court, and took from the Federal court the force and effect of the satisfaction in said court of said judgment by the appellant herein, and appellant here and now claims its protection under and by virtue of the Acts of Congress and the authority of the Federal court in requiring the appellant to pay said judgment into said court in satisfaction of said judgment. And this court in imposing such liability takes from the appellant herein the protection given by the acts of Congress in making satisfaction of said judgment in said court, and also takes from this appellant its property without due process of law, in violation of the Acts of Congress defining the scope and ef-
108 fect of the judgment rendered in the Federal court and the satisfaction thereof, as provided by the Acts of Congress.

8. The court overlooked the point made by appellant that to give the contract of respondent in said cause the force and effect, was unreasonable on its face and was unconscionable and void in that the record shows that the respondent herein rendered no legal services of any kind or character to the said Xedes, and that said Xedes employed other attorneys to bring and prosecute his action, and that the proceeds paid to the Clerk of the United States District Court were the result of the labor and skill of the attorneys who prosecuted said suit, and not due to any services of any kind or character rendered by respondent herein. To give the respondent herein a lien for one-half of the amount of such judgment, is so unconscionable and unreasonable as to render the said contract null and void.

See authorities cited in appellant's brief on file, page 14.

9. The alleged contract between respondent and Xedes was unconscionable and void, because it put a penalty upon the said Xedes if he settled without the consent of respondent. It took from Xedes all that he received by settlement, if he settled without the consent of respondent. It thereby enabled the attorney to hold up his client and force him to forego any settlement which he might make unless said attorney consented. And if the attorney did not consent then take away everything client received in such settlement. Such a contract has been repeatedly declared null and void.

See authorities set out in our original brief, page 14.

10. The court erred in holding that a client cannot discharge his attorney for any cause whatever, after having once entered into a contract for his services. In this case the record shows conclusively that Xedes did discharge this respondent and employed other coun-
sel to bring and prosecute his suit. The respondent made no
109 attempt to take any part at the hearing of the suit, or to bring any suit for Xedes.

This court therefore holds that a client cannot discharge an attorney and employ other attorneys, and it thereby gives the at-

torney's lien act a construction that never was dreamed of or heard of before this opinion was rendered.

11. The opinion herein rendered said act unconstitutional and void in another respect. It gives a number of attorneys' liens for one and the same service, as is shown by the record in this case. There can be no question or doubt that under the attorney's lien act, if any lien existed, that Davis and Holmes, who brought the suit in this County and prosecuted it in the Federal Court, were entitled to a lien for their services; and by this court's decision the respondent, who had nothing to do with the bringing of the suit or obtaining the judgment, is also given a lien for one-half of all that is obtained in that court. The court therefore holds there were two attorney's liens, and that although the appellant in this case paid the judgment of the Federal Court to the Clerk of the United States District Court, it thereby was liable for all the attorney's liens that might be filed against the appellant. If there can be two attorney's liens in this suit, there can be a dozen or forty, for that matter. We submit that the legislature never contemplated that there should be more than one attorney's lien.

12. The court's opinion proceeds upon a wrong assumption of facts. There is nothing in this record to show that Xedes ever resided in the State of Missouri; he was an ignorant Greek, could not understand the English language, had to have an interpreter; that he was injured in the State of Kansas that the cause of action arose & existed in the State of Kansas and respondent had nothing to give the courts of this State any jurisdiction over the cause of action so as to make the Missouri attorney's lien law applicable in giving him a lien. In every case cited by the court, the
110 cause of action originated in the State where the proceedings had been prosecuted in some of the State courts by attorneys who claim the lien. The service was rendered by the attorneys in prosecuting the action to a judgment, and in those cases cited from the Federal Court the attorneys had brought the suit for and in behalf of several creditors, and had procured the judgment and the fruits thereof, had been paid into court for the benefit of all the creditors, and in such cases the court adjudged that the attorneys had a lien on such funds, because it was their services which had procured such funds for the benefit of all of the creditors. But there the court itself adjudged the attorney's lien and enforced it against the funds in its possession. It is needless to refer further to these cases, because such cases have no application to the case arising under this statute.

13. The court overlooked the error in instruction No. 1 given by the trial court, in that it denied Xedes the right to discharge respondent and employ other attorneys. It simply predicated respondent's right of action upon the fact that he had entered into a contract with Xedes, and that Xedes had settled his claim for $500.00. We submit that this instruction is wrong and should not have been given and the case should be reversed for that reason alone, if for no other.

We therefore submit that, for the foregoing reasons, Sections 964

and 005 Revised Statutes of Missouri 1909 do not prohibit a party from discharging an attorney after he has been employed, and that such attorney cannot sit by and permit other attorneys to prosecute a suit, and after such attorneys had prosecuted the case to judgment,
111 and after the defendant in such suit had paid the judgment into court, and the Clerk of the Court had paid out said money as provided by law, then set up his attorney's lien and *mulct* the defendant against whom said judgment was rendered in the further sum of one-half of the amount of the judgment.

To give such law this effect, renders it unconstitutional and void and creates a double liability, denies defendant the right to protection in paying to the proper officer the amount of the judgment rendered against it, and takes from the defendant its property without due process of law, and denies it the equal protection of the law, in violation of the Fourteenth Amendment to Constitution of the United States.

We respectfully submit that for the foregoing reasons a rehearing should be granted in this case.

R. W. BLAIR,
WATSON, GAGE & WATSON,
Attorneys for Appellant.

Afterwards on the 20th day of June A. D. 1917 comes the said appellant by attorneys and files its motion to transfer said cause to the Supreme Court which motion is in words and figures as follows towit:

In the Kansas City Court of Appeals, March Term, 1917.

No. 12473.

L. A. LAUGHLIN, Respondent,

vs.

UNION PACIFIC RAILROAD COMPANY, Appellant.

Motion to Transfer to Supreme Court of the State of Missouri.

Now comes the appellant herein and moves the court to
112 transfer said cause to the Supreme Court of the State of Missouri for the following reasons, towit:

1. That the decision herein violates the Fourteenth Amendment of the Constitution of the United States, in that it takes appellant's property without due process of law, and denies it the equal protection of the law.

2. That the judgment entered herein deprives appellant of the protection of the Acts of Congress in providing for the payment of judgment to the Clerk of the United States District Court, and when so paid as provided by the Acts of Congress, the decision herein deprives the appellant of all benefits of such payment, and such satis-

faction as provided by law, and in so ruling it takes from the appellant the protection of the Acts of Congress providing how it shall satisfy the judgment rendered against it in the United States District Court.

3. That the opinion herein renders Sections 964 and 965 Missouri Revised Statutes of 1909 unconstitutional and void and is in conflict with the Constitution of the State of Missouri which provides that no one shall be deprived of his property without due process of law.

4. That the opinion rendered herein is in violation of the Act itself which contemplates a lien only where the parties settle outside of court, and the Act does not apply where the judgment debtor pays the money to the officer of the court in satisfaction of said judgment; and the construction placed upon said attorney's lien act in said opinion is in conflict with the opinion rendered in the case of Wait vs. Railroad, 204 Mo., and other decisions of the Supreme Court of the State of Missouri in holding that the lien attaches to the judgment itself; and where it is paid into court, an independent suit cannot be maintained; and to permit an independent suit to be maintained, gives a right of action over
113–114 again for the same liability, and thereby deprives the defendant of its property without due process of law, and denies it the equal protection of the law.

Appellant therefore moves the court to transfer said cause to the Supreme Court of the State of Missouri, because of the existence of said Federal question in this case, and also because the construction put upon the attorney's lien act renders said act unconstitutional and void.

R. W. BLAIR,
WATSON, GAGE & WATSON,
Attorneys for Appellant.

* * * * * * *

115 Afterwards on the 20th day of July A. D. 1917 comes the said appellant now plaintiff in error by attorneys and files its petition for writ of error to the Supreme Court of the United States which petition is in words and figures as follows towit:

In the Kansas City Court of Appeals.

UNION PACIFIC RAILROAD COMPANY, Plaintiff in Error,

vs.

L. A. LAUGHLIN, Defendant in Error.

Petition for Writ of Error.

Comes now the above named defendant in error and complains that in the record and proceedings had in said cause and also in the rendition of the judgment in the above entitled cause in the Kansas

City Court of Appeals, on the 2nd day of July, 1917 manifest error hath happened, to the great damage of the said Union Pacific Railroad Company.

Wherefore, said Union Pacific Railroad Company prays for the allowance of a writ of error and for an order fixing the amount of bond, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

UNION PACIFIC RAILROAD COMPANY,
By R. W. BLAIR,
I. N. WATSON,
Its Attorneys.

Afterwards on the 20th day of July A. D. 1917 comes the said plaintiff in error by attorneys and files its assignment of
116 errors which is in words and figures as follows towit:

In the Supreme Court of the United States, —— Term, 1917.

UNION PACIFIC RAILROAD COMPANY, Plaintiff in Error,

vs.

L. A. LAUGHLIN, Defendant in Error.

Assignment of Errors.

Now comes the Union Pacific Railroad Company, defendant in error, and assigns the following errors in the decision and judgment of the Kansas City Court of Appeals of the State of Missouri, towit:

(1.) That the decision herein violates the Fourteenth Amendment of the Constitution of the United States, in that it takes appellant's property without due process of law, and denies it the equal protection of the law.

(2.) That the judgment entered herein deprives appellant of the protection of the Acts of Congress in providing for the payment of judgment to the Clerk of the United States District Court, and when so paid as provided by the Acts of Congress, the decision herein deprives the appellant of all benefits of such payment, and such satisfaction as provided by law, and in so ruling it takes from the appellant the protection of the Acts of Congress providing how it shall — force and effect which shall be given to judgment in the Federal court.

(3.) The opinion herein takes from the appellant the right of protection in paying money to the Clerk of the United States District Court in satisfaction of a judgment entered therein, and to satisfy said judgment in the way and manner provided by the Acts of Congress; and that the records in this cause conclusively
117 show that the appellant paid to the Clerk of the United States District Court the amount of the judgment and costs taxed against it in said cause, and that the statute of the State of Missouri

giving liens to attorneys has no application to such state of facts and cannot deprive a party litigant from the protection afforded by the United States statutes in paying money to the Clerk of the United States District Court, and in so construing such statute the court has imposed a condition upon appellant not contained in the judgment in said United States District Court and has deprived the defendant of the protection given by the United States statutes in the payment of a judgment to the Clerk of the United States District Court, which, contention was urged in our brief in this court, and which has been overlooked and not considered by the court herein.

(4.) That the decision herein violates all decisions of the Supreme Court of this State and the Federal Court, in holding that a party is not protected in the payment of a judgment and costs rendered against him or it, to the proper officer of said court and obtaining satisfaction as provided by law, and the opinion herein under the facts in this case deprives a litigant of all protection of paying money into a court of record and having a judgment satisfied therein as provided by law, and in so construing the attorney's lien act to give a right of action against a litigant who has already paid the money into the court, in pursuance of the statutes of the State or the Acts of Congress, the court deprives the litigant of all protection afforded by law, and takes his property without due process of law and denies to the litigant the equal protection of the law, all in violation of the Fourteenth Amendment of the Constitution of the United States, and appellant here and now invokes the said Fourteenth Amendment of the Constitution of the United States
116 as protection against any such law which deprives it of such protection.

(5.) The construction given to this attorney's lien act by the court in this case deprives the appellant of all protection afforded by the Acts of Congress in satisfying a judgment rendered in a Federal court, acting under the laws of Congress, and in so giving this statute such construction, the court has imposed a liability upon the appellant herein that was not imposed by the judgment of the Federal court, and took from the Federal court the force and effect of the satisfaction in said court of said judgment by the appellant herein, and appellant here and now claims its protection under and by virtue of the Acts of Congress and the authority of the Federal court in requiring the appellant to pay said judgment into said court in satisfaction of said judgment. And this court in imposing such liability takes from the appellant herein the protection given by the acts of Congress in making satisfaction of said judgment, in said court, and also takes from this appellant its property without due process of law, in violation of the Acts of Congress defining the scope and effect of the judgment rendered in the Federal court and the satisfaction thereof, as provided by the Acts of Congress.

(6.) The Opinion herein rendered said act unconstitutional and void in another respect. It gives a number of attorneys' liens for one and the same service, as is shown by the record in this case. There can be no question or doubt that under the attorney's lien act, if any lien existed, that Davis and Holmes who brought the suit in this

County and prosecuted it in the Federal Court, were entitled to a lien for their services; and by this court's decision the respondent, who had nothing to do with the bringing of the suit or obtaining the judgment, is also given a lien for one-half of all that is
119 obtained in that court. The court therefore holds there were two attorney's liens, and that although the appellant in this case paid the judgment of the Federal Court to the Clerk of the United States District Court, it thereby was liable for all the attorney's liens that might be filed against the appellant. If there can be two attorney's liens in this suit, there can be a dozen or forty, for that matter. We submit that the legislature never contemplated that there should be more than one attorney's lien.

Wherefore, the said Union Pacific Railroad Company asks, by reason of each and every one of the foregoing assignments of error, that the judgment and decision of the Kansas City Court of Appeals of the State of Missouri, in the above entitled cause be reversed, and for naught held, and it may be restored to all things which it lost by the action and because of said judgment and decision, and may have and recover all of its costs herein expended.

UNION PACIFIC RAILROAD COMPANY,
By R. W. BLAIR,
I. N. WATSON,
Its Attorneys.

Afterwards on the 20th day of July A. D. 1917 comes the said plaintiff in error by its attorneys and files its supersedeas bond which bond is in words and figures as follows towit:

In the Kansas City Court of Appeals.

UNION PACIFIC RAILROAD COMPANY, Plaintiff in Error,

vs.

L. A. LAUGHLIN, Defendant in Error.

Bond for Prosecution of Writ of Error to the Supreme Court of the United States.

120 Know all men by these presents:

That we, the Union Pacific Railroad Company, E. F. Swinney and I. N. Watson, are held and firmly bound unto the above L. A. Laughlin, in the sum of One Thousand Dollars ($1,000.00) to be paid to the said L. A. Laughlin, for the payment of which well and truly to be made, we bind ourselves and each of us and each our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this — day of July in the year of our Lord, One Thousand Nine Hundred and Seventeen.

Whereas the above named Union Pacific Railroad Company has

prosecuted a writ of error from the Supreme Court of the United States to the Kansas City Court of Appeals of the state of Missouri to reverse a judgment and decree rendered by the judges of the Kansas City Court of Appeals of the state of Missouri in the above entitled cause.

Now, therefore the condition of this obligation is such that if the above named Union Pacific Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make said writ of error good, then this obligation is to be void; otherwise, the same shall be and remain in full force and effect.

UNION PACIFIC RAILROAD COMPANY,
By I. N. WATSON.
E. F. SWINNEY.

Afterwards on the 20th day of July A. D. 1917 the following order allowing writ of error was made which order is in words and figures as follows towit:

121 In the Kansas City Court of Appeals.

UNION PACIFIC RAILROAD COMPANY, Plaintiff in Error,

vs.

L. A. LAUGHLIN, Defendant in Error.

Order Allowing Writ of Error.

The above entitled matter coming on to be heard upon the petition of the defendant in error herein for a writ of error from the Supreme Court of the United States to the Kansas City Court of Appeals, and upon examination of said petition and the record in said matter and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter, it is

Ordered, that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States and that the bond presented by said petitioner be and the same is hereby approved.

This 20th day of July, 1916.

JAMES ELLISON,
Presiding Judge.

STATE OF MISSOURI, ss:

I, L. F. McCoy, Clerk of the Kansas City Court of Appeals do hereby certify that the foregoing is a full true and complete transcript of the proceedings entered of record in the case entitled L. A. Laughlin, respondent vs. Union Pacific Railroad Company, appellant as fully as the same remains of record and on file in my office together with the writ of error and citation attached.

122 In witness whereof I hereunto set my hand and affix the seal of said Kansas City Court of Appeals. Done at office in Kansas City, Missouri this 28th day of July, 1917.

[Seal Kansas City Court of Appeals.]

L. F. McCOY, *Clerk.*

123 In the Supreme Court of the United States.

No. 623.

UNION PACIFIC RAILROAD COMPANY, Plaintiff in Error,

vs.

L. A. LAUGHLIN, Defendant in Error.

Statement of the Points on which Appellant Intends to Rely and Parts of the Record which it Thinks Necessary in Consideration Thereof, as Provided by Section- 2 and 9 of Rule X of the Supreme Court of the United States.

I.

Plaintiff in Error relies upon the following points for a reversal of this cause:

That the construction given to Section- 964 and 965 Revised Statutes of Missouri, 1909, has the effect of creating a right of action against the plaintiff in error by reason of the payment of the amount of the judgment to the clerk of the United States District Court, in satisfaction of the judgment rendered in said court in the case of Christ Xedes against Union Pacific Railroad Company, and the judgment in this cause takes from the plaintiff in error its property without due process of law, and denies to it the protection given by the Acts of Congress authorizing payment of money to the clerk of the United States District Court in satisfaction of the judg-
124 ment therein rendered, and that, to hold that the Sections 964 and 965 Revised Statutes of Missouri, 1909, creates an attorney's lien under such facts, violates the Fourteenth Amendment to the Constitution of the United States, in that it takes the plaintiff in error's property without due process of law, and imposes conditions upon the plaintiff in error which are not imposed by the Acts of Congress, which provide the force and effect which shall be given to judgments in the Federal Court, and which provide for the protection of a litigant in paying money to the Clerk of the United States District Court in satisfaction of the judgment rendered therein.

II.

That the judgment of the Kansas City Court of Appeals herein takes from the plaintiff in error the right and protection given by

the Acts of Congress in paying money to the Clerk of the United States District Court in satisfaction of a judgment rendered therein, and that the construction given to Sections 964 and 965 Revised Statutes of Missouri, 1909, aforesaid, herein, deprives the plaintiff in error of the protection given by the United States Statutes in paying money to the Clerk of the United States District Court in satisfaction of the judgment rendered therein, and in so construing such statutes of the State of Missouri, the Court has given to said Statutes extra-territorial force and effect, and given a lien not created by the Acts of Congress, and thereby imposed a liability upon the plaintiff in error not imposed by the Acts of Congress nor the judgment rendered in the said United States District Court, and the Court has deprived the plaintiff in error of the protection given by the United States Statutes in the payment of such judgments to the clerk of the United States District Court, and in and by such judgment, the Kansas City Court of Appeals deprived the plaintiff in error of its property without due process of law, and denied to the plaintiff in error the equal protection of the law, — violation
125 of the Fourteenth Amendment of the Constitution of the United States.

III.

The record in this cause shows that the alleged cause of action arose in the State of Kansas, and the suit was brought in the Circuit Court, at Independence, Missouri, by Davis & Holmes, attorneys of record, and said cause was removed to the Federal Court, where a judgment was entered and satisfied, all as shown by the undisputed facts in said cause, and that, under such facts, sections 964 and 965 of the Missouri Revised Statutes aforesaid, could not apply to a cause of action originating in another state and tried in the United States District Court of this state, by attorneys other than the defendant in error, and where the money was paid in the United States District Court by the plaintiff in error, and, in so construing such statutes of the State of Missouri to apply, the Court has given the State of Missouri the right and power to legislate as to the force and effect of a judgment in the United States District Court, thereby giving the Statutes of Missouri such effect as to render them unconstitutional and void, and in violation of the Acts of Congress, which provide the method of procedure in such courts and the force and effect of a judgment rendered in said courts.

IV.

The record in this case shows that defendant in error was discharged by Christ Xedes, plaintiff in the case against the Union Pacific Railroad Company, long before any suit was brought, and that he employed Davis & Holmes, attorneys, to bring and prosecute his action, and that such attorneys did bring and prosecute such action, and were the attorneys of record in the Federal Court
126 where the judgment was entered and was satisfied, and received from the clerk of the United States Court the money

paid by plaintiff in error to that officer, and that, under such facts and circumstances, the Sections 964 and 965 could not apply to the judgment rendered in such Federal Court, and to give Sections 964 and 965 the force and effect of establishing a lien under such facts and circumstances, deprives the plaintiff in error of its property without due process of law and denies it all the protection of the Acts of Congress which prescribed the mode and manner in which a judgment shall be satisfied of record in the Federal Courts, and that, under the facts and circumstances of this case, Sections 964 and 965, as construed by the Kansas City Court of Appeals, is null and void and in violation of the Fourteenth Amendment to the Constitution of the United States and also of the Acts of Congress providing for the manner in which judgments shall be satisfied in said Federal Courts.

II.

Statement of Parts of the Record which Plaintiff in Error Thinks Necessary for the Consideration of the Foregoing Points.

1st. The clerk will please copy pages 1, 2 and 3 of the transcript, the same being the Writ of Error and the Citation in said cause.

2nd. Copy pages 1 to 54 inclusive.

3rd. Copy pages 61, 62, 63, 64, 65, 66, 67, and 68, being Assignments of Error, Points and Authorities, appellant's Brief and Argument, filed in the Kansas City Court of Appeals.

4th. Copy pages 100 to 113, ending with the Motion to Transfer to the Supreme Court of the State of Missouri. Omitting that
127 part of respondent's brief set out at pages 113 and 114, copy pages 115, to the end of said transcript.

Plaintiff in error respectfully submits the foregoing points and authorities and that part of the record which it thinks necessary for the consideration thereof, all as required by Rule X, Sections 2 and 9.

Respectfully submitted,

N. H. LOOMIS,
I. N. WATSON &
R. W. BLAIR,
Attorneys for Plaintiff in Error.

We hereby acknowledge receipt of a copy of the above statement of points relied on by plaintiff in error and also the statement of that part of the record which it thinks necessary for a proper consideration thereof.

Dated this 28th day of August, 1917.

L. R. GATES,
L. H. LAUGHLIN, *pro se*,
Plaintiff's Attorneys.

128 [Endorsed:] 623-17/26090. No. 623. In the Supreme Court of the United States. Union Pacific Railroad Company, Plaintiff in Error, vs. L. A. Laughlin, Defendant in Error. Statement of the points on which appellant intends to reply and parts of the record which it thinks necessary in consideration thereof, as provided by Section 2 and 9 of Rule X of the Supreme Court of the United States. N. H. Loomis, R. W. Blair and I. N. Watson, Attorneys for Plaintiff in Error.

129 [Endorsed:] File No. 26090. Supreme Court U. S., October Term, 1917. Term No. 623. Union Pacific R. R. Co., P. E., vs. L. A. Laughlin. Statement of points to be relied on and designation by P. E., and proof of service of same. Filed Aug. 31, 1917.

Endorsed on cover: File No. 26,090. Missouri, Kansas City, Court of Appeals. Term No. 623. Union Pacific Railroad Company, plaintiff in error, vs. L. A. Laughlin. Filed August 14th, 1917. File No. 26,090.

INDEX.

Citations.

No. 623.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

UNION PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

VS.

L. A. LAUGHLIN, DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT.

In November, 1915, defendant in error filed a petition in the Justice Court in Kaw Township, Jackson County, Missouri, against plaintiff in error, to enforce an attorney's lien under the statutes of the State of Missouri. The petition averred that defendant in error was employed by one Christ Xedes to bring and prosecute a cause of action against the plaintiff in error for injuries received at Onago, Kansas, while in the employ of the plaintiff in error, and that without the knowledge or consent of the defendant in error, the plaintiff in error compromised or settled said claim or cause of action by paying to the said Christ Xedes the sum of $550.00, and the said Xedes then and there released said claim or cause of action to defendant. "That by and through said act of the defendant in settling and

compromising said action without the consent of the plaintiff, the plaintiff, was deprived of his fee of one-half of the amount paid by defendant in said compromise and settlement and of his lien upon said cause of action, allowed by the statutes of the State of Missouri, and the plaintiff prays judgment for $275.00."

Under the Missouri Practice Act, no written answer was required to be filed to this petition. The statute provides that any defense can be made under the general issue. The defense interposed in the Justice Court and in the Circuit Court was that defendant in error was not employed by Xedes; that if he was, he had been discharged and other attorneys had been employed to bring and prosecute a cause of action against plaintiff in error and had done so, and that a judgment had been rendered in the United States District Court at Kansas City, Missouri, and that the plaintiff in error had paid to the clerk of the United States District Court, $550.00, in satisfaction of said judgment entered in that court, and that such payment was a satisfaction of all liability of plaintiff in error to Xedes, or any attorney for Xedes, and that the State of Missouri could not enact any law giving a lien upon a judgment rendered in the United States District Court, on a cause of action which arose in another state. That to give such statute such interpretation gave it extra territorial force and effect, which rendered it unconstitutional and void. The defense was also made that plaintiff in error paid the amount of said judgment to the clerk of the United States District Court, in satisfaction of said judgment and costs, and that such payment was a bar to any further liability of plaintiff in error to Xedes or any one claiming as his attorney. The force and effect of this satisfaction was drawn in question by this decision, and hence the validity of an authority exercised under the United States was drawn in question and the decision was against the validity of such authority.

Judgment was rendered against the plaintiff in error in the Justice Court for $275.00 and costs, and the plaintiff in error appealed to the Circuit Court of Jackson County, Missouri. The case was heard in that court *de novo*, on the 10th day of May, 1916. Under the instructions of the court the jury returned a verdict against the plaintiff in error for the sum of $275.00. Motion for new trial was filed, which is set out in full at pages 27-32 of the transcript of record in this case. Motion for new trial was overruled and excepted to, and plaintiff in error in due time perfected its appeal to the Kansas City Court of Appeals. The validity

of Sections 964 and 965, Rev. Stat. Mo. 1909, as applied to the facts in this case, was drawn in question in the trial court, also in the Kansas City Court of Appeals, and the decision was in favor of their validity (see Transcript of the Record, pages 29-30 and 34-36).

The case was heard in the Kansas City Court of Appeals and on the .... day of June, 1917, that court rendered its opinion confirming said judgment, which opinion is set out in full at pages 39-41 of the Transcript of the Record. A motion was filed asking the Kansas City Court of Appeals to transfer said cause to the Supreme Court of the State, which was overruled (Trans. 45). A writ of error was prosecuted from this court to reverse the judgment of said Kansas City Court of Appeals.

The main facts in the case may be summarized as follows:

A Greek laborer by the name of Christ Xedes was injured while in the employ of the Union Pacific Railroad Company at Onaga, Kansas, on October 11, 1913. While Xedes was in the hospital at Kansas City, defendant in error claimed to have procured from him a contract, which is set out in the transcript of the record at page 14. Xedes denied he had made such a contract but, that a Greek by the name of Coliopolus induced him to sign a paper in order that he might get his pay check from plaintiff in error (see Trans. of Rec. p. 20). Immediately after obtaining this alleged power of attorney or contract, the defendant in error served a notice of attorney's lien upon the plaintiff in error, which is also set out in full at page 14 of the transcript of the record. No suit ever was filed by defendant in error for Xedes. Some ten months after the injury, suit was filed in the Circuit Court of Jackson County, Missouri, at Independence, by Xedes, by Davis & Holmes, attorneys at law. The defendant in error had full knowledge that such a suit had been filed by said attorneys for Xedes (Trans. 17), but took no steps to be permitted to assist in the case. Defendant in error gave as a reason for not filing any suit that, "during ten or twelve months after the accident and before suit was filed, I was simply waiting until this man would come in and say, 'File those papers.' The service I performed in this case was getting the statements and making the preparations to file the suit." The letters read in evidence by Coliopolis show Xedes did not instruct defendant in error to bring any suit (Tran. 12).

Nothing was done by the defendant in error in the prosecution of any suit against the plaintiff in error. Mr. Holmes, one of the attorneys of record for Xedes, testified:

> "I think it was about May, 1914, that the suit was brought, and I think it was in May that he came to the office. Xedes stated that he had never seen Mr. Laughlin; he said he didn't know that there was an attorney connected with the case. He further stated that he could not read English and he signed no contract whatever. I told Xedes and Golmis that we would have nothing whatever to do with the case if there was any other attorney connected with it, if there was, he would have to see that attorney. When he told me it was Mr. Laughlin, I changed my attitude so far as his statement was concerned, because immediately thereafter he gave this statement to me, in regard to just how the contract was obtained.
>
> "A jury was waived in this case and it was tried before Judge Valkenburg and judgment entered for $550.00. When the amount was agreed upon, the plaintiff was present himself. Subsequent to that time, we went to the office of the clerk of the court and got Xedes' money for him, giving Xedes two-thirds and our firm retained $165.00 for our services. The case was originally started in May, in the Circuit Court of Jackson County, Missouri, at Independence. Depositions were taken by our firm. Several motions were prepared and handled by our firm and the removal to the Federal Court was contested. We appeared in court at least four or five times."

Xedes' affidavit was read in evidence and he testified that at no time had he employed Mr. Laughlin as his attorney (see Transcript, page 20).

Witness, I. P. Golmis, a Greek interpreter, testified that before any suit was filed, he met Xedes and another party on the streets of Kansas City and asked where they were going. They said they were going up to settle a claim they had against the Union Pacific, and they asked him to go along and assist them. So they went to Mr. Watson's office and Golmis acted as an interpreter for Xedes. Xedes wanted something like eight hundred or a thousand dollars to settle the case. Golmis further testified:

> "I think Mr. Watson told me at that time that Mr. Laughlin was in the case and he couldn't settle with Xedes. Mr. Watson told me to tell Xedes that he was under contract with Mr. Laughlin to handle the case, and I asked Xedes and he said he didn't know anything about it. He spoke something about Mr. Coliopolous calling on him a couple of times

at the hospital, I think, but he didn't say he signed any contract or anything of the kind, and I asked him the second time, to get it right, and he said he didn't know anything about it. They couldn't make a settlement with Mr. Watson, and they went out to hunt an attorney, and I believe I recommended Davis & Holmes. I told them I knew two nice young men and told them if they wanted an attorney I could get them for him."

Not being able to effect any compromise, Xedes employed the firm of Davis & Holmes, attorneys at law, to bring and prosecute a suit against the plaintiff in error.

In due time the plaintiff in error removed said suit to the United States District Court for the Western Division of the Western District of Missouri. The defendant in error at no time appeared as attorney in this suit or claimed to be connected in any wise with the litigation.

On January 25th, 1915, judgment was entered in the United States District Court for the sum of $550.00, and costs, and that the plaintiff in said suit have an execution therefor. The plaintiff in error paid the amount of the judgment and costs to the clerk of the United States District Court on the 3rd day of March, 1915, and the following entry was made by the clerk of that court:

"March 3, 1915.

Judgment and costs is this day satisfied in full and the receipt of $550.00 and costs is herewith acknowledged.

Attest: JOHN B. WARNER, *Clerk.*

CHRIST XEDES,
DAVIS & HOLMES,
By J. V. HOLMES."

Then follows the certificate of the clerk as follows:

"United States of America, Sct.

I, John B. Warner, Clerk of the District Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a true copy of the judgment and the satisfaction thereof, in the cause therein named, as fully as the same appears in my office" (see Trans. p. 19).

At the close of the trial the plaintiff in error asked the Circuit Court to instruct the jury that under the pleadings and evidence their verdict must be for defendant. This instruction was refused by the court and exception was duly saved at the time (Trans. 23).

The plaintiff in error also requested the court to instruct the jury as follows:

"III.

"The court instructs the jury that if you find and believe from the evidence that said Chris Xedes did employ the plaintiff, L. A. Laughlin, to bring and prosecute a cause of action against the Union Pacific Railroad Company for injuries received on or about the 21st day of October, 1913, and if you further find and believe from the evidence that the said Chris Xedes thereafter and before any suit was brought, discharged the said L. A. Laughlin and employed other attorneys, then you are instructed that plaintiff cannot recover on his contract as set forth in his petition and in no event can plaintiff recover more than the reasonable value for the services he reasonably rendered said Chris Xedes."

"V.

The court instructs the jury that if you find and believe from the evidence, the said Chris Xedes did employ the plaintiff, L. A. Laughlin, to bring suit for him against the defendant, the Union Pacific Railroad Company, yet if you further find and believe from the evidence that before any suit was brought, the said Chris Xedes discharged the said L. A. Laughlin and employed other counsel, who prosecuted a suit against the said defendant, in the United States District Court of the Western Division of the Western District of Missouri, at Kansas City, to a judgment in said United States District court, and that the said Union Pacific Railroad Company paid the amount of said judgment to the clerk of the United States District Court at Kansas City, Missouri, in satisfaction of said judgment therein, then you are instructed that the defendant is not liable to the plaintiff in this action for any fees, and your verdict must be for the defendant.

"VI.

The court instructs the jury that although you find and believe from the evidence in this case, the said Chris Xedes did enter into a contract with the plaintiff herein to bring and prosecute an action against the defendant, Union Pacific Railroad Company, yet if you further find and believe from the evidence that the said Chris Xedes discharged the said plaintiff herein before any suit was brought, and employed other counsel to bring and prosecute the action against the Union Pacific Railroad Company, then the plaintiff has no lien in this case under the Statutes of the State of Missouri and your verdict must be for the defendant herein."

To which ruling of the court, in refusing to give each of the foregoing instructions plaintiff in error duly excepted (Trans. p. 25).

The court gave the following instruction to the jury, over the objection and exception of the plaintiff in error:

"The court instructs the jury that if you find and believe from the evidence that Christ Xedes, knowing the contents of the same, signed the power of attorney offered in evidence, then he employed plaintiff as an attorney-at-law to prosecute his claim against the defendant Railroad Company on a contingent fee of 50 per cent of the amount recovered, and if you further find that plaintiff caused to be delivered a copy of the notice of his lien offered in evidence to the agent of the defendant at Kansas City and that thereafter, defendant settled said claim with said Christ Xedes by paying him the sum of five hundred and fifty ($550) dollars without the written consent of plaintiff, then your verdict should be for the plaintiff in the sum of two hundred and seventy-five ($275.00) dollars" (Trans. 24).

Sections 964 and 965 Rev. Stat. of Mo. 1909 are as follows:

"Sec. 964. The compensation of an attorney or counsellor for his services is governed by agreement, express or implied, which is not restrained by law. From the commencement of an action or the services of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim, which attaches to a verdict, report, decision or judgment in his client's favor, and the proceeds thereof in whosesoever hands they may come; and cannot be affected by any settlement between the parties before or after judgment.

"Sec. 965. In all suits in equity and in all actions or proposed actions at law, whether arising *ex contractu* or *ex delicto*, it shall be lawful for an attorney at law either before suit or action is brought, or after suit or action is brought, to contract with his client for legal services rendered or to be rendered him for a certain portion or percentage of the proceeds of any settlement of his client's claim or cause of action, either before the institution of suit or action, or at any stage after the institution of suit or action, and upon notice in writing by the attorney who has made such agreement with his client, served upon the defendant or defendants, or proposed defendant or defendants, that he has such an agreement with his client, stating therein the interest he has in such claim or cause of action, then said agreement shall operate from the date of the service of said notice as a lien upon the claim or cause of action, and upon the proceeds of any settlement thereof for such attorney's portion or percentage thereof, which the client may have against the defendant or defendants, or proposed defendant or defendants, and cannot be affected by

any settlement between the parties either before suit or action is brought, or before or after judgment therein, and any defendant or defendants, or proposed defendant or defendants, who shall, after notice served as herein provided, in any manner, settle any claim, suit, cause of action, or action at law with such attorney's client, before or after litigation, instituted thereon, without first procuring the written consent of such attorney, shall be liable to such attorney for such attorney's lien as aforesaid upon the proceeds of such settlement, as per the contract existing as hereinabove provided between such attorney and his client."

Motion for new trial was filed, in which the invalidity of this statute, as applied to the facts in this case, was urged as a reason for granting a new trial. This motion was denied (See Transcript, page 31). An appeal was taken to the Kansas City Court of Appeals, where the unconstitutionality of this Attorney's Lien Law, as applied to the facts in this case, was raised by assignments, which are set forth at pages 34-36 of the transcript of record.

The opinion of the Kansas City Court of Appeals is found at pages 39 to 40 of the transcript. In its opinion the court says:

> "Defendant makes earnest effort to show that as the judgment was rendered in the Federal Court, the amount paid in to the clerk and by him paid out to attorney of record representing the plaintiff in the judgment, the present lienor plaintiff can have no cause of action; it being insisted in this respect that an attorney's lien under the state law cannot attach to the judgment or proceeding in the Federal Court, that court being regarded as foreign to the state. We think the point not well made."

Plaintiff in error assigns the following specific errors committed by the trial court and the Kansas City Court of Appeals in this case:

I.

The construction placed upon the Attorney's Lien Law of Missouri by the Kansas City Court of Appeals deprives the plaintiff in error of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, in that it subjects the plaintiff in error to a double liability by attaching to one and the same cause of action a multiple of attorney's liens, created by the act of the adverse party to such cause of action, and enforces such liens against the plaintiff in error, al-

though the cause of action to which such multiple liens attach has been merged in a judgment rendered in a United States District Court and all liability thereunder terminated by the lawful satisfaction thereof, in accordance with the Acts of Congress, through the payment of the amount of such judgment to the clerk of said District Court.

II.

The judgment of the Circuit Court of Jackson County, Missouri, and the decision of the Kansas City Court of Appeals affirming said judgment, made the Statute of the State of Missouri, relating to attorney's liens, paramount to the acts of congress conferring judicial authority upon the courts of the United States, in that by and through the judgment and decision of the Kansas City Court of Appeals, the satisfaction of the judgment of the Federal Court was nullified and the liability of the plaintiff in error to the judgment creditor and his alleged attorney enforced, irrespective of its previous termination through the action of the courts of the United States; and that such construction of said statute takes the property of plaintiff in error without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, and deprives the plaintiff in error of the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States.

III.

The construction placed upon the Missouri statute relating to attorney's lien by the Kansas City Court of Appeals, in affirming the judgment of the Circuit Court of Jackson County, Missouri, gives to such statute extra territorial force and effect, for the reason that the cause of action against plaintiff in error, in favor of Christ Xedes, to which the lien of defendant in error was held to attach, arose in the State of Kansas and existed only under and by virtue of the laws of the State of Kansas and where an attorney's lien was given by the statutes of Kansas. See Section 484, General Statutes of Kansas, 1915. The defendant in error took no steps to invoke the laws of the State of Missouri to enforce the cause of action existing under the laws of Kansas, nor the lien given by the laws of Kansas.

This action against plaintiff in error for the deforcement of the alleged lien was instituted by defendant in error in the Justice Court of Jackson County, Missouri, after Xedes had discharged

defendant in error as attorney and employed the firm of Davis & Holmes to prosecute the cause of action against plaintiff in error, and after those attorneys had instituted suit in the Circuit Court of Jackson County, Missouri, which was removed to the District Court of the United States, at Kansas City, Missouri, and prosecuted to judgment in said court by said attorneys, and after the judgment entered against plaintiff in error in said court had been lawfully satisfied by the payment of the amount thereof to the clerk of said court.

The Kansas City Court of Appeals by its decision held that the defendant in error had a lien upon said cause of action, in virtue of sections 964 and 965, Rev. Stat. Mo. 1909, which was deforced by the payment to the clerk of the United States District Court of the amount of said judgment, and that he was legally entitled to the enforcement of such lien created by the statutes of the State of Missouri upon the cause of action arising in the State of Kansas, where an attorney's lien is given by the laws of Kansas, and the Kansas City Court of Appeals thereby gave to such statute extra territorial force and effect and displaced a lien given by the laws of the state where the cause of action arose and substituted the lien of the State of Missouri in its stead and thereby imposed terms and obligations upon the payment and satisfaction of a judgment rendered by a United States District Court in derogation of the Acts of Congress enacted under the authority of the Constitution of the United States conferring judicial authority upon the courts of the United States; and such an application and construction of the statute of the State of Missouri renders such statute unconstitutional and void.

IV.

The construction given by the Kansas City Court of Appeals to the statutes of the State of Missouri, providing for the enforcement of attorney's liens, upon a cause of action arising under the laws of Kansas and prosecuted to a judgment in the United States District Court of Missouri, denies the validity of an authority exercised under the United States, in accordance with the Acts of Congress, by the clerk of the United States District Court, for the Western District of Missouri, in that the said Kansas City Court of Appeals found that the satisfaction of a judgment rendered upon a cause of action pending in the United States District Court, through the payment to the clerk of that court by plaintiff in error

of the amount of said judgment, did not operate as a termination of any lien attaching to and forming a part of said judgment and of the liability of the plaintiff in error as arising out of said cause of action, but such construction of said statute attached an additional liability to defendant in error, created by the supposed act of Xedes, the judgment creditor, prior to the institution of any action against plaintiff in error by Xedes. The relation of attorney and client between defendant in error and Xedes had terminated before suit was instituted by Davis & Holmes, attorneys subsequently employed by Xedes. The action brought by Xedes, and prosecuted to judgment through Davis & Holmes, coerced by law, irrespective of any lien defendant in error might claim, the payment to defendant in error of a sum of money that, under the Acts of Congress, operated as a complete satisfaction of any and all liability arising out of said cause of action from plaintiff in error to said Xedes; and the action of the Kansas City Court of Appeals in affirming a judgment rendered in the Circuit Court of Jackson County, Missouri, compelling plaintiff in error to pay to the defendant in error one-half of the amount of money paid to the clerk of the United States District Court, in satisfaction of the judgment in said court, is a denial of the validity of an authority exercised under the United States, and the construction so placed upon Sections 964 and 965 of said statutes renders them unconstitutional and void.

V.

(1) Plaintiff in error relies upon Assignment of Error No. 1 set out in Transcript of Record, page 46.

(2) Plaintiff in error relies upon Assignment of Error No. 2 set out on page 47 of Transcript of Record.

(3) Plaintiff in error relies upon Assignment of Error No. 3 set out on page 48 of Transcript of Record.

(4) Plaintiff in error relies upon Assignment of Error No. 4 set out on page 48 of Transcript of Record.

(5) Plaintiff in error relies upon Assignment of Error No. 5 set out in Transcript of Record, page 48.

(6) Plaintiff in error relies upon Assignment of Error No. 6 set out in Transcript of Record, page 48.

ARGUMENT.

I.

The plaintiff in error contended in the trial court and in the Kansas City Court of Appeals that the Attorney's Lien Law of Missouri, as construed by the trial court and the Kansas City Court of Appeals, was unconstitutional and void, in that the State of Missouri could not give to defendant in error an attorney's lien upon a cause of action arising in another state and prosecuted to a judgment in the United States District Court by attorneys other than defendant in error, when said judgment was satisfied by payment of said amount to the clerk of the United States District Court, and where the clerk paid out said money under order of the United States District Court, as prescribed by Secs. 1644 and 1645, U. S. Compiled Statutes of 1913. Such a construction permits this state to displace the attorney's lien law given by the laws of the state where the cause of action arose and substitutes the lien law of the State of Missouri in its stead (Section 484, General Statutes of Kansas, 1915). To give such a law such interpretation violated the Fourteenth Amendment of the Constitution of the United States, in that it deprived plaintiff in error of its property without due process of law (See Transcript pages 27 to 30, 34 to 36). Such a construction of said statute gave it extra territorial force and effect, in violation of the Constitution of the United States. Such construction also affected the force and effect of a satisfaction of such a judgment in the Federal Court, in violation of the Constitution of the United States, conferring upon Congress the sole right to prescribe the force and effect of such judgments and the way and manner of satisfying judgments in the United States District Courts.

The Attorney's Lien Law of Missouri is embodied in Secs. 964, 965 of the Revised Statutes of Missouri, 1909. The first section provides that from the commencement of an action or the services of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim, which attaches to a verdict, report, *decision or judgment* in his client's favor, and the proceeds thereof in whosesoever hands they may come; and cannot be affected by any settlement between the parties before or after judgment. Section 965 provides that in

all suits in equity and in actions at law, it shall be lawful for an attorney either before suit or action is brought, or after suit or action is brought, to contract with his client for legal services rendered or to be rendered him for a certain portion or percentage of the proceeds of any settlement of his client's claim or cause of action, either before the institution of suit or action, or at any stage after the institution of suit or action, and upon notice in writing by the attorney who has made such agreement with his client, served upon the defendant or defendants, or proposed defendant or defendants, that he has such an agreement with his client, stating therein the interest he has in such claim or cause of action, then said agreement shall operate from the date of the service of said notice as a lien upon the claim or cause of action, and upon the proceeds of any settlement thereof for such attorney's portion or percentage thereof, which the client may have against the defendant or defendants, or proposed defendant or defendants, and cannot be affected by any settlement between the parties either before suit or action is brought, or before or after judgment therein. This act does not prescribe a remedy or form of procedure to enforce an existing right but it creates a new liability without prescribing any particular remedy and Sec. 1538 U. S. Compiled Statutes does not apply. *Sherry* v. *Oceanic Nav. Co.*, 72 Fed. 565.

If this act applies to actions in the Federal Courts, then it attaches a lien in favor of the attorneys of record to all judgments rendered in a court of equity, as well as at common law. Section 965 expressly provides: *"In all suits in equity, or proposed actions at law, whether arising ex contractu or ex delicto,"* etc., the attorneys who bring and prosecute such suit shall have a lien, etc. Section 1537 U. S. Compiled Statutes 1916, does not require or permit the practice or proceeding in equity suits to be governed by the state procedure or by state statute; and Section 1538 U. S. Compiled Statutes 1916, provides that the laws of the several states, except where the constitution or statutes of the United States otherwise require, shall be regarded as rules of decisions in the Federal Courts. But the Attorney's Lien Law of Missouri, as construed by the Kansas City Court of Appeals, makes no exception of either class of suits in either state or Federal courts. It cannot apply to suits in equity in the United States Court. Hence, it must have been intended by the law making power to apply only to suits in the state courts.

In all cases, so far as we are advised, where the Supreme Court of Missouri has held this statute valid, the cause of action arose in Missouri and the attorneys seeking to enforce the lien were attorneys of record in suits instituted in the courts of Missouri. Whether such statute applies to causes of action arising in another state and prosecuted to a judgment in the Federal Courts of this state has never been decided.

The Supreme Court of the State of Missouri interpreted Sections 964 and 965, *supra*, in the case of *O'Connor* v. *Transit Co.*, 198 Mo. l. c. 636-7, where the cause of action arose in Missouri, as follows:

> "The first section provides for the attorney's lien upon his client's cause of action or counterclaim. * * * Section two provides the nature and character of the contract which the attorney is authorized to enter into with his client *in all suits in equity and in all actions or proposed actions at law, whether arising ex contractu or ex delicto.* This is clearly germane to the subject as expressed in the title, for the reason that it deals with the agreement between the attorney and the client, which is to be made a lien upon the cause of action." (Italics ours.)

The Supreme Court in this case also quotes with approval from *Yonge* v. *Railroad*, 109 Mo. App. 235, as follows:

> "The express statutory liability of a legal character was thereby created, and as no particular or exclusive remedy was provided for its enforcement, it is enforceable by the usual common law remedy; that is, by an action at law corresponding to trespass on the case."

This same language is used in the case of *Wait* v. *Railroad*, 204 Mo. 491.

This statute, therefore creates a right or liability, but does not provide any remedy. It is therefore not a statute providing a form of procedure, but it is one creating a right, and it is a right seriously affecting judgments in this state, as it creates a lien upon the cause of action which is merged in the judgment and becomes a part of the judgment under the express provisions of Section 964.

The whole scope of the Act shows it was intended to apply only to causes of action arising in the State of Missouri or prosecuted in the courts of the State of Missouri.

In the case at bar, the attorneys who brought and prosecuted to a judgment in the United States District Court, the case of Xedes v. Union Pacific Railroad Company, had a lien, if this statute gave any lien at all, because the law expressly provides that the lien shall attach from the commencement of the action or the service of an answer containing a counterclaim and the attorney who appears has a lien upon his client's cause of action, etc., which attaches to a verdict, report, decision or judgment in his client's favor, and cannot be affected by any settlement between the parties. In other words, if the relation of attorney and client exists then the lien attaches from the commencement of the suit and if the case proceeds to a judgment then it becomes merged in the judgment, when the verdict or judgment is rendered. *Wait* v. *Railroad Co.*, 204 Mo. 491.

It is clear from the context of these sections of the statute that this law was meant to apply, and can only apply, to causes of action arising in the State of Missouri, and where they are brought and prosecuted in the state courts of Missouri. To give it the effect of creating a lien upon a cause of action arising in another state and prosecuted to a judgment in the Federal Courts of this state by attorneys other than defendant in error, gives it extra territorial force and effect and renders it unconstitutional and void. The laws of Kansas where this cause of action arose gave an attorney's lien upon the cause of action for a reasonable attorney's fee; Section 484, General Statutes of Kansas, 1915; *Anderson* v. *Railway,* 86 Kan. 179; but under the decision of the Kansas City Court of Appeals this lien is displaced and one given by the laws of Missouri is substituted in its stead.

A similar question was decided in the case of *Plummer* v. *The Great Northern Railway Company,* 60 Wash. 214, 110 Pac. Rep. 989. In this case, one H. G. Funk received personal injuries while in the employ of the Great Northern Railway Company, in British Columbia, and employed one George Lattimer of Spokane, Washington, one of the respondents, to bring and prosecute such actions or proceedings as would be necessary to recover for the injury, agreeing to pay him therefor one-half of any sum Funk might recover. Immediately thereafter written notice of the terms of the contract was served by Lattimer upon the local claim agent and attorney of the Railroad Company, then having offices in the City of Spokane. After the execution of the contract, Lattimer formed a partnership with his co-respondent Plummer, and assigned one-

half interest in the claim. The respondents thereupon employed the legal firm of Taylor and O'Shea, of Nelson, British Columbia, who instituted proceedings under the Workmen's Compensation Act of British Columbia against the branch line railway of the Great Northern, to recover for the injury to Funk. While these proceedings were pending and before anything pertaining to the merits of the claim had been determined, the claim agent of the Great Northern Railway Company, acting under the direction of one A. H. McNeil, who had charge of the railway company's business in British Columbia, settled the claim with Funk for the sum of five hundred dollars and obtained a release of all claims against the appellant. No suit or action was begun on behalf of Funk in the State of Washington, or elsewhere, other than the proceedings above mentioned. After the settlement was made, the respondents began an action in the state courts of Washington, to recover one-half of this sum paid in settlement claiming an attorney's lien was given them by the laws of Washington. The trial judge took the respondents' view and awarded them a judgment for $250.00. The Supreme Court of Washington, in passing upon the question of whether the attorney's lien law of that state applied, said:

> "The rights of the respondents to recover therefor depends on the fact whether they had a lien upon the money agreed to be paid Funk in the settlement. As there was not such common law lien, the lien, if any exists, must be derived from the statute. The only statute in our state that can be said to be at all applicable to the case is Section 136, Rem. & Bal. Code, which reads as follows:
>
> > 'An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided. * * * (3) Upon money in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.'
>
> But we think it clear that in order for a lien to arise on notice under this statute, there must be an action or proceeding against the adverse party in some court; and as the statute can have no extra territorial effect, it must be an action pending in some of the courts of this state. Any other rule would make the statute oppressive upon the debtor. *He would be compelled to decide at his peril all controversies between the attorney and his client, from the question as to which of them was entitled to the money in his hands*" (italics ours).

In the case of *Sherry* v. *Navigation Co.*, 72 Fed. Rep. 565, the attorney for plaintiff sought to enforce an attorney's lien under Sec. 66 of the Code of Civil Procedure, State of New York, 1879, which same provision is contained in Section 964 of the Revised Statutes of the State of Missouri, 1909. Sherry received personal injuries while in the employ of the Oceanic Steam Navigation Company and employed an attorney, agreeing to pay one-half of the money realized by judgment or otherwise. The attorney sought to enforce an attorney's lien for one-half of the amount paid to Sherry in settlement of his case. The question arose as to whether this statute applied to a suit pending in the Federal Court. The Circuit Judge, in passing on this question, said:

> "Plaintiff's attorney had no lien at common law on the cause of action (citing cases). *His sole reliance is on the amendment passed in* 1879 *to Section* 66 *of the Code of Civil Procedure, an act which relates to state courts, officers of justice, and civil proceedings.* Section 914 of the United States Revised Statutes does not operate to import this act in its entirety into the federal system of jurisprudence. It simply undertakes to conform the federal practice, pleadings, and forms and modes of proceeding in civil causes to the state model, only 'as near as may be,' not as near as may be possible, nor as near as may be practicable. * * * Whatever rights the state statute may give the attorney against his client or his adversary he may prosecute in the state court, but such statute cannot operate to constrain this court to incumber its calendar with a case, all controversy in which has been finally settled between the parties" (italics ours).

This court decided in the case of *Wayman* v. *Southard*, 10th Wheaton 1, that:

> "The jurisdiction of a court is not exhausted by the rendition of its judgment, but continues until that judgment shall be satisfied. Many questions arise on the process subsequent to the judgment, in which jurisdiction is to be exercised."

And in the same case, it is said:

> "The question really adjourned is, whether the laws of Kentucky respecting executions passed subsequent to the process act, are applicable to executions which issue on judgments rendered by the federal courts? If they be, their applicability must be maintained, either in virtue of the 34th section of the judiciary act, or in virtue of an original inherent power in the State Legislatures, independent of any Act of Congress, to control the modes of proceeding in suits

depending in the courts of the United States, and to regulate the conduct of their officers in the service of executions issuing out of those courts.

"That the power claimed for the state is not given by the 34th section of the judiciary act, has been fully stated in the preceding part of this opinion. That it has not an independent existence in the State Legislatures, is, we think, one of those political axioms, an attempt to demonstrate which, would be a waste of argument, not to be excused. The proposition has not been advanced by counsel in this case, and will probably, never be advanced. Its utter inadmissibility will at once present itself to the mind, if we imagine an Act of a State Legislature for the direct and sole purpose of regulating proceedings in the courts of the Union, *or of their officers in executing their judgments.* No gentleman, we believe, will be so extravagant as to maintain the efficacy of such an act. It seems not much less extravagant, to maintain, that the practice of the federal courts, and the conduct of their officers, can be indirectly regulated by the State Legislatures, by an act professing to regulate the state courts, and the conduct of the officers who execute the process of those courts. It is a general rule, that what cannot be done directly, from defect of power, cannot be done indirectly. The right of congress to delegate to the courts the power of altering the modes (established by the process act) of proceedings in suits, has been already stated; but, were it otherwise, we are well satisfied that the State Legislatures do not possess that power" (italics ours).

We submit that it would be just as reasonable to say that defendant in error was entitled to a lien by reason of this statute if suit had been instituted, and prosecuted to a judgment in the courts of Kansas and the money paid into such courts in satisfaction of said judgment, as to hold this statute gave a lien upon said cause of action arising in Kansas and prosecuted to a judgment in the United States District Court in this state. To hold that said Statute of Missouri gave a lien under the facts of this case, gives said statute extra territorial force and effect and is therefore unconstitutional and void.

An analogous question was decided in the case of The Roanoke, 189 U. S. 185. The question involved in that case was whether the states may create liens for labor and supplies furnished as against foreign vessels (vessels owned in other states or countries), and under such circumstances as would not authorize a lien under general maritime law. In passing upon the question, this court said:

"That it is competent for the states to create liens for necessaries furnished to domestic vessels, and that such liens will be enforced by the courts of admiralty under their general jurisdiction over the subject of necessaries."

This court then goes on to say:

"The question involved in this case, however, is whether the states may create such lien as against foreign vessels (vessels owned in other states or countries), and under such circumstances as would not authorize a lien under the general maritime law. The question is one of very considerable importance, as it involves the power of each state, which a vessel may visit in the course of long voyage, to impose liens under wholly different circumstances and upon wholly different conditions."

This court quotes with approval from the opinion of Mr. Justice Story, in the case of The Chusan, 2 Story, 455, as follows:

"This statute is, as I conceive, perfectly constitutional, as applied to cases of repairs of domestic ships, that is, of ships belonging to the ports of that state. * * * *But in cases of foreign ships, and supplies furnished to them, the jurisdiction of the courts of the United States is governed by the Constitution and laws of the United States, and is, in no sense governed, controlled, or limited by the local legislation*" (italics ours).

And in this Roanoke case, this court said:

"While no case involving this precise question seems to have raisen in this court, we have several times had occasion to hold that where Congress has dealt with a subject within its exclusive power, or where such exclusive power is given to the Federal courts, as in cases of admiralty and maritime jurisdiction, it is not competent for states to invade that domain of legislation, and enact laws which in any way trench upon the power of the Federal government. Cases arising in other branches of the law furnish apt analogies. The principle is stated in a nutshell by Chief Justice Marshall in *Sturges* v. *Crowninshield*, 4 Wheat. 122, 193. 'But it has never been supposed that this concurrent power of legislation extended to every possible case in which its exercise by the states has not been expressly prohibited. The confusion resulting from such a practice would be endless * * * Whenever the terms in which a power is granted to Congress, or the nature of power, require that it should be exercised exclusively by Congress, the subject is as completely taken from the State Legislatures as if they had been expressly forbidden to act on it.'"

In *Pritchard* v. *Norton*, 106 U. S. (l. c.), 129, this court said:

> "The principle is, that whatever relates merely to the remedy and constitutes part of the procedure is determined by the law of the forum, for matters of process must be uniform in the courts of the same country; but whatever goes to the substance of the obligation, and affects the rights of the parties, as growing out of the contract itself, or inhering in it or attaching to it, is governed by the law of the contract."

The lien of an attorney is a matter of substantive right, and grows out of the obligations imposed by this statute and is not a mere matter of remedy or form of procedure which under Section 1538, U. S. Compiled Statutes, 1916, the United States Court must apply to a cause of action arising in another state and prosecuted to a judgment in such Federal Court. No state can pass a law which gives a right of action by reason of a satisfaction of a judgment in the Federal Court, nor declare and make such payment to the clerk of the United States Court a "compromise" and settlement "of a cause of action" in violation of the provisions of Sections 964 and 965, *supra*.

In the case of *Hyde et al.* v. *Stone*, 20 Howard (U. S.) l. c. 175, this court said:

> "But this court has repeatedly decided that the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the states, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. In many cases, state laws form a rule of decision for the courts of the United States, and the forms of proceeding in these courts have been assimilated to those of the states, either by legislative enactment or by their own rules. But the courts of the United States are bound to proceed to judgment, and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. (*Suydam* v. *Broadnax*, 14 Pet. 67; *Union Bank* v. *Jolly, Admr.*, 18 How. 503)."

Under the facts disclosed in this record, the Missouri Attorney's Lien Act, as construed by the Kansas City Court of Appeals, deprives the plaintiff in error of its property without due process of law, in violation of the Fourteenth Amendment of the Consti-

tution of the United States. If this statute applies at all, it gave an attorney's lien to the firm of Davis & Holmes, who brought the action and prosecuted the suit to a judgment in the Federal Court, and who in conjunction with Xedes, the plaintiff in the case, received the money from the clerk of the United States District Court and acknowledged satisfaction of said judgment. The relation of attorney and client did not exist between the defendant in error and Xedes, in the suit instituted and prosecuted in the United States District Court, from the time of the bringing of the suit until its final termination by satisfaction of said judgment. If the defendant in error has a lien, *then the statute gives a multiple of liens to different attorneys upon the same cause of action;* the Statute of Kansas, Sec. 484, Gen. Stat. of Kansas, 1915, gives an attorney's lien in any proceeding where such attorney was employed, etc., and in *Anderson* v. *Ry. Co.,* 86 Kan. 179, the Supreme Court of Kansas held that where a cause of action arose in the State of Kansas and a suit was brought to enforce said cause of action in the Courts of Missouri and that thereafter a suit was brought in the courts of Kansas by other attorneys to enforce the same cause of action in the Courts of Kansas and a notice given as provided in Sec. 484, and thereafter the attorney for the Railroad Co. in Missouri settled the case without any knowledge of the institution of the Kansas suit, that the attorneys for the plaintiff in the suit pending in the courts of Kansas had a lien for services therein upon any money due on a settlement of the suit pending in Missouri upon the same cause of action. The logical effect of the ruling of the Supreme Court of Kansas in *Anderson* v. *Railway Co., supra,* was to hold that the Kansas law gave a lien upon the cause of action wherever enforced, and that the lien so given by the Kansas statute could not be displaced by the laws of Missouri; and a settlement made in Missouri with attorneys employed in Missouri, was no bar to the enforcement of the lien given by the Statute of Kansas in a suit instituted for that purpose in the courts of Kansas. If the Missouri law gave a lien on the Kansas cause of action, and the Kansas laws gave a lien upon the same cause of action, then there was a multiple of liens created by two sovereign states upon one and same cause of action and a satisfaction of a lien as to one attorney in the State of Missouri, is not a satisfaction of a lien created by the statute to other attorneys in Kansas, who were not attorneys in the litigation in Missouri and had noth-

ing to do with the same. See *Anderson* v. *Railway Co., supra.* If any lien existed it was a lien given by the laws of Kansas and not by any law of Missouri. The plaintiff in error could not set up the claim of the defendant in error in the suit in the United States District Court. The controversy between Xedes and defendant in error, over the question whether defendant in error had ever been employed by said Xedes, was wholly foreign to the controversy between plaintiff in error and Xedes, in the suit in the United States District Court. This multiplicity of attorney's liens makes such a statute oppressive upon the debtor. He is compelled to decide at his peril, whether Xedes had ever employed the defendant in error, and if he had whether Xedes was justified in discharging the defendant in error, and plaintiff in error was also subjected to another attorney's lien in favor of the attorney who brought and prosecuted the suit in the Federal Court and the payment of the amount of the judgment and satisfaction of one attorney's lien was no defense to again paying another and different lien. Neither would such payment of a lien created under the Missouri statute be a bar to a lien in a suit brought in Kansas on the same cause of action. This was expressly ruled in *Anderson* v. *Railway, supra.* Such a statute we submit takes the property of plaintiff in error without due process of law in violation of the 14th Amendment of the Constitution of the United States. The controversy between Xedes and defendant in error was not a subject of interpleader in the suit of Xedes against plaintiff in error in the United States District Court because the plaintiff in error denied its liability to pay Xedes anything whatever and did not become liable until the judgment was rendered in the United States District Court. The defendant in error, if he ever had been employed by Xedes, had been discharged and was not authorized to represent Xedes in the controversy between the plaintiff in error and Xedes. Whether Xedes entered into the contract which is set forth in the abstract of the record herein, was a contested fact. Xedes denied making any such contract and denied having employed the defendant in error to bring or prosecute any claim against the plaintiff in error (See Trans. p. 20).

Xedes was a Greek, who could not read nor write the English language, and claimed he signed an order which he supposed was for the purpose of getting his pay check due from the plaintiff in error; that he did not know the defendant in error, and never had employed him (Trans. 23).

The right of the defendant in error to have a lien under the Missouri Statute must have arisen by virtue of an employment as attorney of Xedes in this particular cause of action.

The language of the statute is that the attorney shall have a lien upon his client's cause of action. Section 965 provides the nature and character of the contract necessary to establish a lien. The lien cannot exist unless that relationship exists. Whether Xedes employed defendant in error, or whether he had a right to discharge the defendant in error after employing him, if he did so, was a question of fact outside of the controversy between Xedes and the Union Pacific Railroad Company, which could only be settled by an independent suit between Xedes and the defendant in error and not by a bill of interpleader. Xedes had a right to have the question of whether he had employed defendant in error to bring and prosecute a claim against the plaintiff in error, determined by a common law jury of twelve men. This evidently was so either in the Federal Court or in the courts of the State of Missouri.

Section 1968, Revised Stat. of Missouri, 1909, provides:

> "An issue of fact in an action to recover money only * * * must be tried by a jury, unless a jury trial be waived, or a reference ordered as hereinafter provided."

We have been unable to find any law authorizing a party to be brought into a suit and to try an independent controversy after a judgment has been rendered in such suit and an execution awarded. A bill of interpleader would not lie at such a stage of the proceeding.

In 23 Cyc. page 8, in treating of the subject as to when a bill of interpleader will lie, it is said:

> "Where the demand of one claimant, if valid at all, is against the other claimant personally, and not upon the fund in dispute, an interpleader is not proper."

Again, in 23 Cyc. page 11, it is said:

> "The doctrine of interpleader is essentially founded on the privity of rights or contracts between the parties. One of the essential elements of this equitable remedy is that all the adverse titles or claims to the thing or debt in dispute must be dependent on or derived from a common source. The remedy is not available where one of the claimants asserts a title paramount and adverse to the claims of the other parties."

In the case of *Killian* v. *Ebbinghaus,* 110 U. S. l. c. 571, this court defined the nature and character of a bill of interpleader, as follows:

> "In such a bill it is necessary to aver that the complainant has no interest in the subject matter of a suit; he must admit title in the claimants and aver that he is indifferent between them, and he cannot seek relief in the premises against either of them (Citing numerous cases)."

This court further says:

> "The answer of Schnenck and Schneider denies that the appellee is the legal owner of the property, or that he holds it as trustee. They aver that the title to the property is in them as trustees of the German Evangelical Concordia Church. Upon the filing of the answer the point of controversy between the parties plainly appeared. Both claimed to own the legal title, and the defendants were in possession. The issue thus raised could only be tried in an action at law."

In the case of *Groves* v. *Sentell,* 153 U. S. l. c. 485, this court again defined the nature and character of a bill of interpleader, as follows:

> "The general rule is that a party who has an interest in the subject matter of the suit cannot file a bill of interpleader, strictly so called. In fact, the assertion of perfect disinterestedness is an essential ingredient of such a bill" (Citing *Killian* v. *Ebbinghaus,* 110 U. S. 568).

In the case of *Hayward & Clerk* v. *McDonald,* 192 Fed. 890, the Circuit Court of Appeals of the Fifth Circuit, used the following language, in defining a bill of interpleader:

> "If a plaintiff has money in his hands which is claimed by two or more persons, and the plaintiff has no claim to it himself, and has incurred no independent liability to either of the claimants, so 'that he is indifferent between them, a mere stakeholder, and is sued for, or is threatened with suit for, the fund by the rival claimants, his remedy is to file a bill of interpleader. In such case he would obtain a decree permitting him to deposit the money in court and be discharged, with his costs, and the defendants would be required to interplead and contest their rights to the fund. So, in brief, it may be said that a bill of interpleader, strictly so called, is one in which the complainant claims no relief against either of the defendants, and only asks that he may be at liberty to pay the money or deliver the property

to the court, to be awarded to the one to whom it of right belongs, and that he may thereafter be protected against the claims of both" (*Bedell* v. *Hoffman,* 2 Paige (N. Y.) 199).

In the case at bar, the plaintiff in error had no funds in its hands belonging to Xedes or the defendant in error. There was nothing which authorized the plaintiff in error to ask for a bill of interpleader in the United States District Court, for the reason that the plaintiff in error was denying all liability of every kind and character to Xedes, or any attorney for Xedes. That liability was contested and was not fixed or determined until the United States District Court entered its judgment for five hundred fifty dollars. Up to that point under all the above authorities the plaintiff in error could not ask or require the defendant in error to be brought into the United States District Court to determine his rights to any money due to Xedes. When the judgment was entered an execution was awarded to the plaintiff, Xedes, giving him the right to coerce the payment of that money into court under an authority exercised under the United States.

The action given by the Missouri Lien Law is not an equitable action to enforce a lien, but it is an action in the nature of a tort for deforcing a lien.

In the case of *O'Conner* v. *Transit Co.,* 198 Mo. 622, the Supreme Court of Missouri says:

> "It will be observed that this action is not strictly to enforce the lien provided by the statute, *but is to recover the amount of such lien by reason of the failure of the defendant to recognize the lien in its settlement with the plaintiff.*" (italics ours)

In the case of *Taylor* v. *Transit Co.,* 198 Mo. 715, the Supreme Court, in speaking of the nature of this lien, used this language:

> "*Such an action would not be, strictly speaking, an action to enforce the lien, but an action against him who deforced the lien for the value thereof.*" (italics ours)

And this same language is again quoted with approval in the case of *Wait* v. *Railroad Co.,* 204 Mo. l. c. 501.

In a case where the attorneys appear in court in an action, the court has jurisdiction over them as well as their client, and

in such a case a court could control the payment of the funds paid to the clerk of said court, but in this case the defendant in error was not an attorney in the case and the United States District Court had no jurisdiction over the controversy between Xedes and defendant in error, as their controversy was wholly foreign to the suit in the U. S. District Court and either party was entitled to a trial of the issues involved, in a suit instituted for that purpose.

Nothing that plaintiff in error did, after judgment was rendered, would authorize a bill of interpleader or a motion to stay execution. Instead of awaiting for execution to be issued and its property to be seized and sold by the United States marshal, defendant paid the amount of this judgment to the clerk of the United States District Court, as a satisfaction of that judgment and to escape the levy of an execution upon its property and a sale thereof. It is this payment of money to the clerk of the United States District Court that constituted the deforcement of the lien claimed by defendant in error. In short, the plaintiff in error is mulcted in damages in this case for doing what the law compelled it to do in the United States District Court. We submit that such procedure deprives plaintiff in error of its property without due process of law in violation of the XIV Amendment of the Constitution of the United States.

III.

Satisfaction of judgment by payment to the clerk of United States District Court discharged all liability of plaintiff in error to Xedes or any one claiming under him.

In *Williams* v. *Bradley,* 187 Ala. 158, 65 Southern Rep. 534, the plaintiff, an attorney, brought a suit to establish an attorney's lien against the judgment debtor where an execution had been issued and the land of the judgment debtor was levied upon and sold under the execution, and the judgment creditor purchased the land for the amount of the judgment and costs. Thereafter, the judgment debtor redeemed said land from said sale under execution by paying to the judgment creditor the amount of the judgment and costs. Thereafter, the attorney sought to enforce his lien against the judgment debtor, claiming that he had a lien upon the judgment and also on the proceeds arising from the sale under the execution issued on said judgment.

In passing upon whether the attorney had such a lien, the Supreme Court of Alabama said:

> "The subject matter of the lien, viz., the judgment, becomes extinct, if the judgment is paid in full. 'When property is levied on and sold by direction of the plaintiff in execution, and he bids it off at a price sufficient to pay the entire judgment, the law appropriates the bid to the discharge of the execution and satisfaction of the judgment, notwithstanding he may refuse to accept the property. *Thomas Gazenor,* 90 Ala. 537, 8 So. 153, 24 Am. S. R. 830; *Johnson* v. *Motlow,* 157 Ala. 405, 47 So. 568.' Manifestly, that which by law's orderly and valid process has been made, or becomes extinct, cannot be or remain the subject of the charge of a lien. *With this judgment extinguished in a perfectly lawful manner by levy upon a sale of the defendant's property, certainly there could be no possible further liability against or exaction of the defendant in the judgment. No fraud of any character is charged or imputed to him. He was wholly acquitted when the judgment was satisfied. His redemption of the land from the purchaser at the execution sale is not shown to be affected with any mali fides. The plaintiff's remedy for his compensation is at law against his client."* (italics ours.)

In Black on Judgments, Vol. 2, Sec. 986, in speaking of how judgments may be satisfied, it is said that the judgment debtor may pay to the plaintiff creditor, or his attorney of record, the amount of the judgment, or

> "the debtor may also pay the money to the clerk of the court before execution issues, or after execution has been returned, but the clerk has no authority to receive payment while the execution is in the hands of the sheriff. Nor has the clerk the power to receive payment of the debt before it has been reduced to judgment. But if he receives the money and retains it until after judgment and by some plain and unequivocal act shows an intention to hold the money in his official capacity and apply it to the payment of the judgment, the judgment will be discharged. If the debtor pays the amount of judgment to the sheriff, who holds an execution for its collection, he is entitled to have the judgment entered as satisfied, although the creditor never receives the money." Citing *Beard* v. *Milliken,* 68 Ind. 231; *Governor* v. *Reed,* 38 Ala. 252.

In *Howard* v. *United States,* 184 U. S. 673, this court held that payment to a clerk of the United States Court by a suitor in

court was a satisfaction of the claims made against such suitor. In passing upon the right to pay money to the clerk of a United States District Court this court said:

> "A well considered case upon this general subject is that of *McDonald* v. *Atkins,* 13 Neb. 568. That was an action on a clerk's bond to recover the amount received by him from a sheriff who had collected it on an execution. The point was made that the clerk was not authorized by statute to accept payment of a judgment, and so the court of original jurisdiction held in that case. The Supreme Court of the State said: 'No one can doubt, we think, that this ruling was in direct conflict with the general understanding of the legal profession of this state as to the duty of court clerks in the receipt and disbursement of money paid upon judgments, from the first organization of our judicial system, through all its changes, down to the present time. Indeed, we doubt exceedingly that any one, especially a practicing lawyer, has ever supposed that upon the rendition of a money judgment, the defendant could not prevent a further accumulation of costs and interests, and have a satisfaction legally entered of record, by at once paying to the clerk of the court the amount which it calls for. If he could not—if clerks are really without authority to receive money on judgments in their custody, then to whom, in the absence of the plaintiff and his attorney, could payments be legally made? * * * While it is true that we have no statute which in express terms declares that the clerks of the several courts shall accept payment of judgments in their custody, it is very evident that the legislature contemplated and intended that they should do so. * * * And even in the absence of such provision, can it be doubted that a party against whom a money judgment is sought by action may, upon being summoned, pay the amount demanded 'into court,' and thereby prevent the making of any further costs? But how is it to be effected? In the case of inferior courts—those not of record, and unprovided with clerks—the payment can, of course, only be made to the judge or magistrate in person; but in courts of record, where all the steps taken in the progress of the case, from the commencement to the satisfaction of final judgment, are recorded and preserved, and where a clerk for the performance of this duty is specially provided, it is otherwise. In these courts payments of money are never made to the judge, but the uniform practice in this state has always been to make them to his clerk, to whose custody and care the files, records, and whatsoever else relates to cases in courts, are confided. And this practice, so universal, although not positively directed by any act of the

legislature, conflicts with none, and, as we have shown, is recognized by and in perfect harmony with several.' These observations are strikingly applicable in the present case."

The case of *Blake et al.* v. *Hawkins,* 19 Fed. 204, the court in construing the force and effect of payment of money to the clerk of the United States District Court, says:

> "The controversy depends upon whether or not the clerk received the money under an order of this court. This seems too plain for discussion. The order of the court was its judgment. That was, that the defendants pay to the plaintiffs the amount to which they were entitled. It was under that order that the defendants paid the sum recovered to the clerk. They might have awaited an execution, or, if the money were in the hands of a trustee or officer who would be controlled by the order of the court, an order, directing such officer or trustee to pay as should be ordered. But it was safe for them to pay the clerk. The judgment and his official bond, one or both, were their protection. Had there been no order of the court, they could not have safely paid it. He would have been only their agent, or the agent of the plaintiff. The judgment under which, and under which alone, they paid the money, made him the agent of the law, and threw around the payment the security of the bond which the statute requires. *If the clerk had failed to pay the amount of the judgment to the plaintiffs, it could not have again collected from the defendants*" (italics are ours).

In the case of *In Re Finks,* 41 Fed. 383, the court, in speaking of the force and effect of payment of money to the clerk of a court said:

> "The payment of money into the registry of the court, through the clerk, as the servant and agent of the court, where there is a fund under the control of the court, and where there is no hand designated to receive it, has been in existence from the foundation of the courts and is too firmly fixed to be successfully assailed as not being authorized by an act of Congress or rule of court prescribed in pursuance of the act of Congress."

In the case of *Howard* v. *United States,* Justice Adams, who tried the case at the Circuit, used the following language:

> "It is my opinion that in imposing upon clerks of the Circuit Court the duties above alluded to, which so necessarily and vitally affect the interests of suitors within its courts, and in requiring from such clerk a bond for the faithful dis-

charge of his duties, the United States, by necessary legal intendment, thereby consents to the use of its name by suitors wronged by official misconduct of the clerk, in a suit against the clerk or his sureties on his official bond. This implied authority or necessary legal intendment becomes the more apparent when it is considered that the clerk's office is an agency of the United States government, ordained and established for the use and convenience of its people. The money intrusted to its clerk is, in a large sense, money which the government has undertaken to keep for its people."

In the case of *Martin Co.* v. *Shannonhouse,* 203 Fed. 517, under an attachment proceedings, a levy was attempted to be made upon proceeds of a judgment recovered in the Federal District Court, and which had been paid to the clerk of that court. The court, after quoting the statute directing how moneys should be paid into court, and quoting the statutes that provide that no money deposit shall be withdrawn except by order of the judge of the court, etc., the court said:

"It is therefore generally held that property *in custodia legis* is not subject to attachment. 3 Stand. Enc. Pro. 280. The question presented here has been decided in a well considered opinion, in which all of the decided cases are cited, by District Judge Waddill, of the Eastern District of Virginia. In *Corbitt* v. *Farmers' Bank* (C. C.) 114 Fed. 602, he says:

'The position taken by counsel for complainant, that the court, having entered its final order in respect to the money in question, had exhausted its jurisdiction over the same, and that such funds then remained subject to seizure by attachment or other legal process, as any other property belonging to defendant bank, is equally fallacious. A conclusion in favor of parties litigant, to any controversy, would be barren of good, if the court rendering the decision was powerless to cause its decrees and orders to be put into operation and duly executed; and such a result as to money in the court's own registry would, indeed, leave it in a helpless and pitiable plight.'"

In the case of *Lawson* v. *Telephone Co.,* 178 Mo. App. l. c. 136, the Kansas City Court of Appeals decided the specific question herein involved. This was an action to enforce an attorney's lien under a Missouri statute. The court said:

"In the motion for rehearing, it is urged that payment of the judgment to Robertson and Yeater, two of plaintiff's

counsel, must protect defendant, because it was the payment of a 'final judgment paid to the only officers of the court authorized to receive the amount of money due on the judgment.' And the question is asked, if the payment of the judgment to a portion only of plaintiff's counsel will not protect, what is one to do against whom a final judgment has been rendered?

"The trouble with this contention lies in the assumption of the minor premise that Robertson and Yeater are 'the only officers of the court authorized to receive the amount of money due on the judgment.' *If a defendant wishes to avoid all responsibility in the matter it can do so by placing the money in custodia legis, that is, by paying it into court, or depositing it with the clerk, throwing upon the law and the court the responsibility of saying where and to whom it shall go.* * * *

"If defendant had paid the judgment into court or to the clerk, it would have been released of all liability, but not otherwise."

Under the foregoing authorities, plaintiff in error contends, that the payment of the amount of the judgment rendered in the United States District Court to the clerk of that court, in the case of *Xedes* v. *Union Pacific Railroad Company*, constituted a complete satisfaction of all liability of the Union Pacific Railroad Company to Xedes, or his attorneys. The money was *in custodia legis*, and before it could be withdrawn from the court's custody and control an order to that effect had to be made by the judge of that court.

Our Supreme Court, in the case of *Wait* v. *Railroad*, 204 Mo. l. c. 502, said:

"(5) And if a percentage contract exists and a judgment has been obtained which has not became a finality (for instance, where a motion for new trial is pending and undisposed of, or where an appeal has been granted), then a compromise settlement and release in which plaintiff's attorney is ignored and to which he does not assent, does not destroy his lien. But the release of the judgment may be opened up on motion in the nature of a special proceeding and the discharge be set aside *pro tanto, so as to let in his lien.*"

And again, l. c. 503, the court said:

"If the reasoning of *Young* v. *Renshaw, supra*, as approved by Fox, J., in *O'Connor* v. *Transit Co., supra*, is to be followed (and no reason is apparent to us why it should not

be followed, when a case in point arises), then the same remedy set forth in the fifth hypothesis, above, is open to an attorney where the judgment is compromised and satisfied without his consent, after it has become a finality."

There was no compromise of the judgment rendered in the United States District Court. Plaintiff in error paid into court the full amount of that judgment.

The Supreme Court of Missouri thus recognized that where a judgment has been satisfied by compromise or settlement outside of court between the parties, that the satisfaction must be set aside in order to let in the lien. The necessary effect of such a ruling was that no lien attached while the judgment remained satisfied. In the case last cited, the judgment was compromised between parties without paying the money into court. We have been unable to find any case decided by the Supreme Court of Missouri holding that the attorney could maintain an action against the judgment debtor where the amount of the judgment had been paid into court and the money was *in custodia legis.*

The direct effect of said ruling is that where a judgment is entered in the suit the attorney's lien becomes merged in the judgment, and forms part thereof and a satisfaction of the judgment must necessarily extinguish the lien.

We submit that if an execution had been issued out of the United States District Court against the plaintiff in error to collect said judgment and the United States Marshal had levied upon property of plaintiff in error and sold the same to satisfy said judgment and had paid the money to the clerk of the United States District Court, who in turn paid it out to Xeles and his attorneys of record, there could be no liability of plaintiff in error to a subsequent suit to recover one-half the amount so collected by the United States Marshal. But if the contention of defendant in error is correct, he could still proceed against the plaintiff in error and sue for one-half of the amount the United States Marshal collected under the execution.

But such contention is decided adversely in the case of *Williams* v. *Bradley, supra,* where it is held specifically that where execution is issued against the judgment debtor and the marshal levies the execution and sells property and pays money to the clerk of the court in which the judgment is entered, in satisfaction of such judgment, that there is no further liability on the part of the judg-

ment debtor to an attorney for any lien under the statutes. We submit the same rule applies, where the judgment debtor pays the amount of such judgment to the clerk of the United States District Court without waiting for an execution to be issued and levied upon his property and a sale had thereunder. Such facts do not constitute a compromise or settlement made out of court which evidently was contemplated by the law making power of Missouri.

If the position of the plaintiff in error is correct, that the payment of the amount of the judgment in the case of *Xedes* v. *Union Pacific Railroad Company,* to John B. Warner, Clerk of the United States District Court, constituted a satisfaction of that judgment, then it was satisfied as to all parties so far as any liability on the part of plaintiff in error was concerned. The money was *in custodia legis,* and it was beyond its power to direct or say how or to whom said money should be paid. There was no further liability on its part to any person whatever, and the Federal question in this case to be decided is, did such payment to the clerk of the United States District Court, in satisfaction of said judgment under the facts shown in evidence, constitute a defense to the cause of action alleged in the petition of defendant in error? The satisfaction of a judgment of the United States District Court by an officer of the United States Government, was an authority exercised under the United States, and the validity of such satisfaction depends upon whether the law of Missouri applies to a judgment of the United States court, and the decision of the State Court was that the state law applied and decided against the validity of such satisfaction.

IV.

This court has jurisdiction to review the judgment of the Kansas City Court of Appeals by writ of error, because the validity of the satisfaction of the judgment of the United States District Court was drawn in question and the decision of the state courts was against such validity.

The language of the Statute of Missouri, giving an attorney's lien, provides that from the commencement of an action * * * the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision or judgment in his client's favor, etc. If it attaches to the judgment, and cannot be affected by any settle-

ment between the parties, and if the judgment is satisfied by operation of law, then we submit the lien is gone. It can not exist separate and apart from the judgment.

In *Taylor* v. *Transit Co.*, 198 Mo. l. c. 725, our Supreme Court construed this act and held: "This lien is upon the cause of action until merged, and then it attaches to the thing into which the cause of action is merged." If this lien was merged into and became a part of the judgment, then it follows the payment of said judgment into court and the satisfaction thereof satisfied the lien if there was any. The whole certainly includes the less.

Section 237 of Judicial Code Amended by Act of Congress, Sept. 6, 1916, provides for a final review of a final judgment of the highest court of a state, where is drawn in question the validity of a treaty or statute of, *or an authority exercised under the United States, etc.* (Italics ours.)

The part of said section quoted by defendant in error, on page four his reply brief, uses the same expression "or authority exercised under the United States," etc. The first part of Section 237, *supra,* provides that a final judgment of the highest court of a state where is drawn in question "an authority exercised under the United States," and the decision is against the "validity of such authority," may be re-examined by this court by writ of error and affirmed or reversed as this court decrees.

In the record in this case it is shown that the validity of the payment of the judgment in the United States District Court, for Western District of Missouri, is drawn in question, and the right of the clerk of the United States District Court to accept payment of said judgment, and cause said judgment to be satisfied of record, is drawn in question by the ruling of the Kansas City Court of Appeals. This is the highest court of the state in which said case can be reviewed.

In *Railroad Co.* v. *Johnson,* 151 U. S. 79, this court held good a defense made in a case in the State Court, that the plaintiff below was subject to the order of the Federal Court made in the receivership case, which prescribed that all persons who had claims, with which the property might be charged, should present them by intervention to that court, and that such order of discharge of the United States Court barred any judgment *in personam* against such receiver. The State Court denied that such was the effect of

the order of the Federal Court, and held that such order was not binding on the plaintiff below. On a writ of error to this court, this court said:

> "The validity of no treaty or statute of the United States was drawn in question, nor was any claim of right or immunity set up under the Constitution or any treaty or statute of, or commission under the United States, so that we are confined to the inquiry whether the validity of an authority exercised under the United States in any other regard than above indicated, or any claim under such authority, was denied," and it was ruled that the decision of the State Court overruling the defense above mentioned was a decision against "an authority exercised under the United States."

In *Pittsburgh, etc. Ry. Co.* v. *Trust Co.*, 172 U. S. (l. c.) 507, this court said:

> "Upon looking into the record, we find that the defendant railway company claimed in its answer that if a lien at any time attached to the property in question to secure the thirty-six bonds purchased by Lynde, such lien was wholly divested and discharged by the above proceedings in the Federal Courts under which that company claims title. This it would seem, was such an assertion of a right and title under an 'authority exercised under the United States' as gives this court jurisdiction to re-examine the final judgment of the state court."

In the case of *Carson* v. *Dunham*, 121 U. S. l. c. 429, in speaking of this question, this court said:

> "The answer sets up as a defense to the suit the decree in *Hyatt* v. *Carson*, and the title acquired by the purchase under the authority of the sale in *Carson* v. *McBurney*. It is an attempt to enforce an ordinary property right, acquired under the authority of judgments and decrees in the courts of the United States, without presenting any question 'distinctly involving the laws of the United States.' The suit, therefore, as now presented, is not one arising under the constitution and laws of the United States, within the meaning of that term as used in the removal act of 1875; but if, in deciding the case, the highest court of the state shall fail to give full effect to the authority exercised under the United States, as shown by the judgments and decrees of their courts, relied on to support the title of Mrs. Carson, its decision in that regard may be the subject of review by this court under Section 709. The petition for the removal and the answer, taken together,

set up and claim in her behalf a right derived from an authority exercised under the United States, but not necessarily under the laws of the United States, within the meaning of that term as used in the removal act."

To the same effect, see *Cook* v. *Avery*, 147 U. S. l. c. 385.

The Kansas City Court of Appeals cited and relied upon the case of *Central Railroad Co.* v. *Pettis*, 113 U. S. 116. In this case certain unsecured creditors of the Montgomery & West Point R. R. Co. (an Alabama corporation) instituted proceedings in equity in a court of that state, in behalf of themselves and all other creditors similarly situated who would come in and contribute to the expenses of the suit, to establish a lien on the property of that company in the hands of the Western Railroad Company, which had purchased and had possession of it. The suit was successful and the court allowed all unsecured creditors to prove their claims before a register. Pending the reference before the register, the defendant corporations bought up the claims of the complainants and other unsecured creditors. Thereupon, the solicitors of the complainants filed their joint petition in the state court in said cause to be allowed a reasonable compensation in respect to the demands of the unsecured creditors and to enforce a lien against the proceeds derived from said proceedings. The prayer of the petition was that an account be taken, etc., and that they be declared to have a lien for the value of such services on all the property of the Montgomery & West Point Railroad Company which had come into the possession of the Western Railroad Company, and that so much of it as may be necessary for that purpose be sold to meet the amount of their demands. Subsequently the Georgia corporations presented their joint petition for the removal of the suit commenced against them by Pettus and Dawson and Watts and Sons, to the Circuit Court of the United States, in which court it was docketed (see 3 Wood, 620) and after answer by the defendants and proof taken, proceeded to a decree. When the case was removed from the state court, nothing practically remained for determination between the parties, except the claim of appellees, citizens of Alabama, to a lien upon the property owned by the two Georgia corporations. The law of Alabama gave the attorneys a lien for services rendered in a cause of action pending in that state.

In passing upon the question of the enforcement of that lien given by the Alabama statute, this court said:

"The court below did not err in declaring the lien upon the property in question, to secure such compensation as appellees were entitled to receive; for, according to the law of Alabama, by one of whose courts the original decree was rendered, and by which law this question must be determined, an attorney at law or solicitor in chancery has a lien upon a judgment or decree obtained for a client to the extent the latter has agreed to pay him."

The court held that the decree of the Circuit Court was proper under the facts shown in evidence.

The other cases cited were where the attorneys had brought a suit in court to preserve property, and where by their efforts the property had been preserved for the benefit of a number of creditors. And the court held, that under such circumstances, equity would enforce a claim for attorney's fees as a part of the costs of the case.

The decisions in the foregoing cases have no bearing upon the question involved in this case.

We therefore submit that the cases cited by the Kansas City Court of Appeals do not support the decision in this case, and that to give such statute such construction renders the same null and void, in violation of the Fourteenth Amendment of the Constitution of the United States; that to permit the State of Missouri to pass a law creating a lien upon a right of action arising in another state, and where an attorney's lien is given by the laws of the state where the cause of action arose, created a multiplicity of liens and makes said statute oppressive and puts upon the plaintiff in error the burden of defending numerous claims for one and the same thing.

Under the decision of the case of *Anderson* v. *Railway Co.*, 86 Kan. 179, the Supreme Court of Kansas held, that where a suit was first brought in the State of Missouri by Missouri attorneys, upon a cause of action arising in Kansas, and thereafter another suit was brought by different attorneys in the State of Kansas, upon the same cause of action, and thereafter the attorneys for the railroad company in the State of Missouri compromised the suit in Missouri, that such settlement of such suit in Missouri and the extinguishment of the alleged lien of the attorneys in the case in Missouri, constituted no defense to a claim for an attorney's lien in the suit brought in the State of Kansas, upon the same cause of action.

To permit the Missouri statute to attach a lien upon a Kansas cause of action, where the Kansas laws also, give a lien to attorneys in a suit instituted in that state upon the same cause of action, has the force and effect of either displacing a lien given by the laws of Kansas and substituting therefor a lien given by the State of Missouri upon a cause of action arising in the State of Kansas; or it created an additional lien by operation of the law of Missouri upon said cause of action arising in Kansas, and the satisfaction of an attorney's lien given by the law of the State of Missouri to attorneys who brought the suit in the State of Missouri, constituted no defense against another attorneys' lien given by the law of Kansas upon the same cause of action, to another set of attorneys, who brought a suit in Kansas for the same cause of action.

We submit that this creation of a multiple of attorneys' liens upon the same cause of action takes the Railroad Company's property without due process of law. It imposes a double liability upon the Railroad Company by reason of this statute for one and the same act, and a satisfaction of the liability imposed by the laws of Kansas constitutes no defense to or the satisfaction of the liability imposed by the laws of the State of Missouri, and vice versa, and in addition the Statute of Missouri as construed by the Kansas City Court of Appeals gives a multiplicity of attorneys' liens to different attorneys in this state in addition to the lien created by the Kansas Statute upon the same cause of action.

In the case at bar, the payment of money to the clerk of the United States District Court, in satisfaction of the judgment in said court, and the payment of said money by the clerk to Xedes, the plaintiff in said cause, and his attorneys, operated as a satisfaction of one lien given by the statutes of the State of Missouri, if that statute applied in any way to give a lien upon the judgment in the Federal Court. But by reason of this statute, the State of Missouri has imposed another attorney's lien upon the same cause of action, in favor of defendant in error, without reference to whether Xedes had rightfully discharged him or not, or whether there was another lien existing under the laws of Kansas. The court will observe by the instruction given on behalf of the defendant in error, all he was required to show in order to establish a lien under the Missouri statute against the plaintiff in error was, that he at one time had been employed by Xedes, and that the

plaintiff in error had notice of such fact and that plaintiff in error thereafter had paid $550.00 to the clerk of the United States District Court, in satisfaction of the judgment of that court. These facts were all that was required to impose a liability upon the plaintiff in error. Under such a law there may arise a half dozen different liens to that number of different attorneys in the various courts of this state and the courts of the state where the cause of action arose. We submit that such a statute is so oppressive as to render it null and void, and in violation of the Constitution of the United States, aforesaid.

We, therefore, submit that this court has jurisdiction to determine this question on writ of error; first, because the validity of the statute of the State of Missouri was drawn in question in the State Court, and the decision was in favor of its validity; second, that an authority under the United States was exercised by the clerk of the United States District Court, in receiving payment of the amount of said judgment and in satisfying said judgment of record in said court, and that such satisfaction released the plaintiff in error from any liability arising out of said judgment, or any lien attached to said judgment; and that such satisfaction constituted an authority exercised under the United States, which was drawn in question by the decision of the State Court, and warrants a writ of error in this case.

The amount of the judgment in this case is small, but the far-reaching consequences of the decision of the Kansas City Court of Appeals, we think, is a justification for asking this court to review the decision of the State Court against plaintiff in error herein.

Respectfully submitted,

N. H. Loomis,
R. W. Blair,
I. N. Watson,
Attorneys for Plaintiff in Error.

No. 623.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

UNION PACIFIC RAILROAD CO., PLAINTIFF IN ERROR,

VS.

L. A. LAUGHLIN, DEFENDANT IN ERROR.

REPLY BRIEF OF PLAINTIFF IN ERROR.

I.

Since preparing, serving, and filing our brief in opposition to motion to dismiss writ of error, we have been served with a copy of reply brief by defendant in error, in which he contends for the first time, that a writ of error is not the proper remedy to obtain a review of the judgment of the Kansas City Court of Appeals, but that a writ of certiorari was the only remedy provided by the amendment to the Judicial Code by the Act of Congress Sept. 6, 1916. Section 237 of that act provides for a final review of a final judgment of the highest court of a state, where is drawn in question the validity of a treaty or statute of, *or an authority exercised under the United States, etc.,* (Italics ours).

The part of said section quoted by defendant in error, on page four his reply brief, uses the same expression "or authority exercised under the United States," etc. The first part of Section 237, *supra,* provides that a final judgment of the highest court of a state where is drawn in question "an authority exercised under the United States," and the decision is against the "validity of such

authority," may be re-examined by this court and affirmed or reversed as this court decrees.

In the record in this case it is shown that the validity of the payment of the judgment in the United States District Court, for Western District of Missouri, is drawn in question, and the right of the clerk of the United States District Court to accept payment of said judgment, and cause said judgment to be satisfied of record, is drawn in question by the ruling of the Kansas City Court of Appeals.

In *Railroad Co.* v. *Johnson*, 151 U. S. 79, this court held good a defense made in a case in the State Court, that the plaintiff below was subject to the order of the Federal Court made in the receivership case, which prescribed that all persons who had claims, with which the property might be charged, should present them by intervention to that court, and that such order of discharge of the United States Court barred any judgment *in personam* against such receiver. The State Court denied that such was the effect of the order of the Federal Court, and held that such order was not binding on the plaintiff below. On a writ of error to this court, this court said:

> "The validity of no treaty or statute of the United States was drawn in question, nor was any claim of right or immunity set up under the Constitution or any treaty or statute of, or commission under the United States, so that we are confined to the inquiry whether the validity of an authority exercised under the United States in any other regard than above indicated, or any claim under such authority, was denied," and it was ruled that the decision of the State Court overruling the defense above mentioned was a decision against "an authority exercised under the United States."

In *Pittsburgh, etc., Ry. Co.* v. *Trust Co.*, 172 U. S. (l. c.) 507, this court said:

> "Upon looking into the record, we find that the defendant railway company claimed in its answer that if a lien at any time attached to the property in question to secure the thirty-six bonds purchased by Lynde, such lien was wholly divested and discharged by the above proceedings in the Federal Courts under which that company claims title. This it would seem, was such an assertion of a right and title under an 'authority exercised under the United States' as gives this court jurisdiction to re-examine the final judgment of the state court."

In *Dupasseur* v. *Rochereau*, 21 Wall. 130, this court ruled that where a state court refused to give effect to a judgment of a Federal Court upon a judgment involving the same subject matter, that "such a ruling" would be one in which a title or right is claimed under an authority exercised under the United States and the decision is against the title or right set up."

We therefore submit that this record shows a denial of "an authority exercised under the United States," and a writ of error is the proper remedy to obtain a review of the judgment of the state court.

II.

The validity of the Missouri Attorney's Lien Law was drawn in question in this case in the state court (Trans. p. 29). It was contended in the trial court and in the appellate court that the State of Missouri could not give an attorney's lien in a case where the cause of action arose in another state, and was prosecuted to judgment in a Federal Court. That to give such act such effect rendered it null and void. Hence there was drawn in question the validity of the State Statute as applied to the facts shown in this record.

III.

But we submit that the Act of Sept. 6th, *supra*, Sec. 3, C. 448, provides for a writ of certiorari only in the cases therein specified. But Sec. 237 provides in the first paragraph for a writ of error only where the decision of the state court was against the validity of a treaty statute, or authority exercised under the United States, while in the second paragraph a new remedy is provided, where the decision is in favor or against the validity of the statute treaty, or authority drawn in question. So that a writ of error is provided in first paragraph where the decision is against the validity of the Statute Treaty, or authority exercised under the United States. But if the decision is in favor of the validity of such statute, etc., a new remedy is provided for a review of such decision by writ of certiorari. We submit that the right to a review of a final judgment of a state court may be had by writ of error or certiorari, where is drawn in question the validity of an authority exercised under the United States, and where the decision is against the validity of such authority.

Plaintiff in error contended in its motion for a new trial in 9th paragraph (Trans., Record 29), that the State of Missouri could not pass a law attaching a lien to a cause of action arising in another state and prosecuted to a judgment in the Federal Court of this state. This raised the validity of that statute as applied to the fact shown in this case, and the decision was in favor of the validity of such state statute as applied to the facts in this case, and therefore a writ of error was the proper remedy to review this judgment of the state court.

We respectfully submit the motion to dismiss writ of error should be overruled.

N. H. LOOMIS,
R. W. BLAIR,
I. N. WATSON,
Attorneys for Plaintiff in Error.

No. 623.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

UNION PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

VS.

L. A. LAUGHLIN, DEFENDANT IN ERROR.

REPLY BRIEF OF PLAINTIFF IN ERROR, TO BRIEF OF DEFENDANT IN ERROR ON THE MERITS OF THE CASE.

I.

The statement in brief of defendant in error (p. 4) that the judgment for $550.00 was entered by stipulation, is not correct. See Transcript, page 19, where it is shown that stipulation waiving a jury was filed and the cause submitted to the court, whereupon the court being fully advised in the premises, found the issues in favor of the plaintiff and assessed as damages the sum of $550.00.

The statement is also made that the record does not show the money was paid to the clerk of the United States District Court. The judgment entry (p. 19, Transcript of Record) shows that a judgment of $550.00 was entered against the Union Pacific Railroad Company. On the margin of the above entry appears the following: "March 3, 1915, judgment and costs is this day satisfied in full and the receipt of $550.00 and costs is herewith acknowledged. John B. Warner, Clerk. Christ Xedes, Davis & Holmes by Jay vs. Holmes."

This shows conclusively that the money was paid over to John B. Warner, clerk, or else he would not have been receipting for the same. Xedes had no right to receive any costs. All he was entitled to was the $550.00.

Again, it is stated, that in none of the instructions does the plaintiff in error invoke the protection of the Constitution of the United States.

Instruction No. 5 (Tr. p. 25) told the jury that although Xedes did employ the plaintiff, L. A. Laughlin, to bring suit for him against the defendant, Union Pacific Railroad Company, if the jury found from the evidence, that before any suit was brought the said Xedes discharged the said Laughlin and employed other counsel, who prosecuted a suit against the said defendant, in the United States District Court, to a judgment in said United States District Court, and that the said Union Pacific Railroad Company paid the amount of said judgment to the clerk of the United States District Court, in satisfaction of said judgment therein, then the jury are instructed that the defendant is not liable to the plaintiff in this action for any fees, and their verdict must be for the defendant.

This instruction was predicated upon the facts that the statutes of the State of Missouri could not apply to a cause of action originating in another state and prosecuted to a judgment in a Federal Court of this state. A refusal of this instruction gave the statute of the State of Missouri (as plaintiff in error claims) an extra territorial force and effect, which rendered it unconstitutional and void.

The seventh ground of the motion for new trial (Tr. p. 27) set out that, in holding that the plaintiff was entitled to recover, violated the statutes of the United States and set at naught the statutes of the United States in such cases made and provided, and defendant asked the court to set aside the verdict and judgment herein as being contrary to the provisions of the United States Constitution and the laws of Congress above mentioned, and that said laws are exclusive and cannot be amended, annulled or added to, by any law of the State of Missouri.

The eighth ground of the motion for new trial sets out, that the lien laws of the State of Missouri do not provide, and can not provide, any lien upon such a cause of action existing in another state, where the attorney has not invoked the laws of the State of

Missouri in said cause of action to enforce said cause of action and existing in Kansas.

The ninth and tenth instructions are both predicated upon the same theory, that to enforce this law would render the laws of the State of Missouri unconstitutional and void, in that it gave such statute an extra territorial force and effect, and was also imposing an obligation upon a judgment rendered in the Federal Court of the United States, which was beyond the jurisdiction and power of the Legislature of the State of Missouri to do.

The thirteenth ground of the motion for new trial asks a new trial for the reason, the statutes of the State of Missouri if construed to apply to the facts shown in the evidence in this case, become unconstitutional and void for the reason that it is given extra territorial force and effect and makes it extend beyond the jurisdiction of the State of Missouri and is therefore violative of the Constitution of the United States, in that it is seeking to create rights and obligations upon a cause of action arising and existing in another state.

This question was raised in the trial court, and the eleventh assignment of error in the Kansas City Court of Appeals, was based upon the proposition that in holding the statute of the State of Missouri imposed a lien upon a judgment in the United States District Court, such construction violated the constitution of the United States and Acts of Congress, in that it imposed terms and conditions upon the judgment of the United States District Court, contrary to the provisions of the Federal Constitution and Acts of Congress. That the said State of Missouri cannot impose any terms or conditions upon a judgment rendered in the Federal Court under the Acts of Congress of the United States, and in so holding, the court imposed amendments to the laws of Congress governing judgments in the Federal Court, in violation of the Constitution of the United States and the Acts of Congress of the United States, in such cases made and provided, and especially had it violated the Fourteenth Amended of the Constitution of the United States, in that it seeks by such procedure under the state statute to take the property of appellant without due process of law, and deny to it equal protection of the law. This assignment proceeds upon the theory that it is unconstitutional and void for the Legislature of the State of Missouri to pass any law which has an extra territorial force and effect, and also that it subjected the defendant to a multiple of liens upon a cause of action and

thereby violated the Fourteenth Amendment of the Constitution of the United States. That by such procedure the appellant was deprived of its property without due process of law and was denied the equal protection of the law.

The 12th, 13th and 14th assignments of error in the Kansas City Court of Appeals set out a violation of the Federal Constitution. Also that the lien law of the State of Missouri can have no extra territorial force and effect upon a cause of action arising in another state and prosecuted to a judgment in the Federal Court.

Under Point IV (Tr. p. 37) in the first paragraph, it was contended that such a construction of the Attorney's Lien Act rendered the same unconstitutional and void.

Therefore, the statement made by the defendant in error (Defendant's Brief, p. 4), that the plaintiff in error did not raise the constitutional question, is not borne out by this record.

II.

The point is made in the brief of defendant in error (p. 9) that the writ of error should be dismissed, upon the further ground that there has been no final judgment in the case "in the highest court of a state in which a decision in the suit could be had.

The record entries, certified by the clerk of the Kansas City Court of Appeals, show that the motion for rehearing and motion to transfer to the Supreme Court were both overruled, and a stipulation has been filed in this court agreeing that the clerk shall insert these record entries. The point made, that the transcript of the record does not show that these motions have been passed upon, is now out of the record.

But the further point is made that there is no final judgment in this case, because there has been no application made to the Supreme Court of the State of Missouri for writ of *certiorari* to review this decision of the Kansas City Court of Appeals, and reference is made to the case of *State ex rel.* v. *Broaddus*, 238 Mo. 189. The only jurisdiction given the Supreme Court, to review by *certiorari* the decision of one of the Courts of Appeals is to determine whether such Court of Appeals has exceeded its jurisdiction, and also to determine whether such Court of Appeals followed the constitutional provision which requiries that such court shall conform its decision in a case to the last controlling decision of the Supreme Court, upon the question presented.

Section 6 of the Amendment to the Constitution of 1884 also points out the method by which a Court of Appeals may transfer a cause to the Supreme court, *i. e.*, when one of the judges of the court deems the decision of the Court of Appeals in conflict with the last previous ruling of the Supreme Court on such point. There was no dissenting opinion in this case and there is no claim that the decision of the Kansas City Court of Appeals is in conflict with any previous ruling of the Supreme Court. The Supreme Court has never passed upon the question involved in this case.

In the case of *State ex rel.* v. *Smith,* 173 Mo. 398, the Supreme Court, in passing upon a petition for *certiorari* which alleged that the judgment of the Kansas City Court of Appeals was in conflict with the decisions rendered by the Supreme Court and therefore in violation of the Constitutional provision, said:

> "The first question with which we are confronted is as to whether or not *certiorari* can be resorted to for the purpose of having this court quash the judgment of the Court of Appeals and remit the record to the Circuit Court with instructions to sustain the demurrer to the petition."

And in the same case, it is said:

> "In this case neither writ of error nor appeal would lie, so that the judgment of the Court of Appeals is conclusive upon the relator unless the action of that court can be reviewed by this proceeding, and, if erroneous, corrected. *Certiorari* 'only brings up the record, and can only reach errors or defects which appear on the fact of the record of the tribunal to which it is issued and which are *jurisdictional* in their nature.' "

And it was also stated in that case, that the Court of Appeals had failed to follow the last controlling decision of the Supreme Court of Missouri.

The court further said:

> "If those courts (Courts of Appeal) can be compelled by writ of *certiorari,* or otherwise, to send to this court the record in cases in which they have delivered opinions for review upon grounds such as are shown to exist in this proceeding, it is difficult to conceive of a case in which they could not be required to do so, and thus disregard the spirit and intention of Section 6, Article 6, of the Constitution, *supra,* and the laws organizing these courts by which they are made the

final arbiters in all cases that come before them of which they have jurisdiction, except as otherwise provided by said Section 6, Article 6, of the Constitution."

It will thus be seen that a writ of *certiorari* would be perfectly senseless and useless in this case. There is no contention that the Kansas City Court of Appeals had no jurisdiction to hear the case, and a petition for a writ of *certiorari* under no conditions or circumstances would be entertained by our Supreme Court to review this decision.

Plaintiff in error filed a motion to transfer the case to the Supreme Court, which was denied, and such judgment is final in the courts of Missouri.

III.

The plaintiff in error paid the amount of the judgment to John B. Warner, clerk of the United States District Court, and he satisfied the judgment; and such satisfaction was the exercise of an authority under the Constitution and laws of the United States.

In *Tullock* v. *McVane*, 184 U. S. l. c. 503, it was claimed on the part of the defendant, that as the bond for injunction was executed under the order of a court of equity of the United States, it was therefore by an authority exercised under the United States. In passing upon such question, this court said:

> "Certainly, the courts of the United States derive all their powers from the Constitution and laws of the United States, and their authority is therefore exercised thereunder. Being then an obligation entered into by virtue of such authority, the conclusion cannot be escaped that the defense specially set up that no liability on the bond could arise until the court of the United States in which the controversy was pending had finally determined that the injunction should not have been granted, was the assertion of an immunity from liability depending on an authority exercised under the United States, and therefore necessarily involved the decision of a Federal question."

The same ruling was made in the case of *M. K. & T. v. Elliott*, 184 U. S. 530.

The case of *Compher* v. *M. & K. Tele. Co.*, 137 Mo. App. 89 (cited by defendant in error in his brief), has no application

whatever to the facts in this case. In that case, Prince was the attorney of record, and a judgment was entered in the case in the State Court and was prosecuted on appeal to the Kansas City Court of Appeals, where it was affirmed. Appellant served notice on the defendant of his contract and also on the clerk of the Circuit Court, setting up the amount of his claim. Defendant paid the money to the clerk without notifying the appellant that he was going so. One of the other attorneys associated with Mr. Prince in this case appeared in the office of the clerk of the Circuit Court, before Mr. Prince arrived there, and a check was turned over to Mr. Guthrie, who refused to surrender it to Mr. Prince, and thereupon Mr. Prince filed a motion to set aside the satisfaction of the judgment and for execution for his part of the fee. It was held that he had consented. The court said:

> "There are two good reasons for sustaining the action of the trial court in overruling the motion of Prince for execution for his part of the fee. One is that the case shows that, with the knowledge and consent of Prince, payment of the judgment was to be made to the clerk of the trial court, and it was so made. He accepted that mode of payment and notified the clerk that the judgment was to be paid to him. The entire difficulty has arisen since the payment thus made. The other reason is, that the case shows Boyle, Guthrie & Smith to have been his agents, and that agreement as to mutual interest in the fees and the payment to them is binding on him."

We therefore submit that this is not in conflict with the opinion in the case of *Lawson* v. *Telephone Co.*, 178 Mo. l. c. 136, cited in our original brief. The money was here paid into court and was in *custodia legis*, and the acts of the clerk of the United District Court in paying out that money and in satisfying the judgment was an authority exercised under the United States, which would justify the issuance of this writ of error as the proper remedy for review of such judgment.

Respectfully submitted,

N. H. LOOMIS,
R. W. BLAIR,
I. N. WATSON,
Attorneys for Plaintiff in Error.

INDEX.

Citations.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

UNION PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

VS.

L. A. LAUGHLIN, DEFENDANT IN ERROR.

Brief of Plaintiff in Error in Opposition to Motions of Defendant in Error to Dismiss and to Affirm and to Transfer to a Summary Docket.

STATEMENT.

Plaintiff in error relies upon the following facts, which it claims raise the federal question, decisive of this case, to-wit:

A Greek laborer, by the name of Christ Xedes, was injured while in the employ of the Union Pacific Railroad Company, at Onaga, Kansas, on October 11, 1913. While Xedes was in the hospital at Kansas City, Missouri, defendant in error claimed to have procured from him a contract, which is set out in the transcript of the record at page 14. Immediately after obtaining this power of attorney, or contract, the defendant in error served a notice of attorney's lien, which is also set out in full on page 14 of the transcript of the record.

No suit was filed by defendant in error for Xedes. Defendant in error testified (Trans. 17): "The next I heard I met Mr. I. N. Watson on the street and he told me some other attorney had filed suit." This was shortly after suit was filed. "* * * I

never paid any more attention to it until I heard the matter was settled. The first delay in my not doing anything in the matter was owing to the request of plaintiff himself, and then I discovered there was a suit filed and thought there was no use filing two suits." Some ten or twelve months after the accident, suit was filed in the Circuit Court of Jackson County, at Independence, Missouri, by Xedes, through Davis & Holmes, attorneys at law (Tr. 18).

In due time, plaintiff in error removed said suit to the United States District Court, for the Western Division of the Western District of Missouri. Defendant in error never appeared as attorney for Xedes in any court. Defendant in error stated his reason for not filing the suit as follows:

> "During ten or twelve months after the accident and before suit was filed, I was simply waiting until this man would come in and say, 'File those papers.' The service I performed in this case was getting the statements and making the preparations to file the suit" (see Transcript 17).

Mr. Holmes, one of the attorneys of record for defendant in error, testified:

> "I think it was about May, 1914, that the suit was brought, and I think it was in May that he came to the office. Xedes stated that he had never seen Mr. Laughlin; he said he didn't know that there was an attorney connected with the case. He further stated that he could not read English and he signed no contract whatever. I told Xedes and Golmis that we would have nothing whatever to do with the case if there was any other attorney connected with it, if there was, he would have to see that attorney. When he told me it was Mr. Laughlin, I changed my attitude so far as his statement was concerned, because immediately thereafter he gave this statement to me, in regard to just how the contract was obtained.
>
> "A jury was waived in this case and it was tried before Judge Van Valkenburg and judgment entered for $550.00. When the amount was agreed upon, the plaintiff was present himself. Subsequent to that time, we went to the office of the clerk of the court and got Xedes' money for him, giving Xedes two-thirds and our firm retained $165.00 for our services. The case was originally started in May, in the Circuit Court of Jackson County, Missouri, at Independence. Depositions were taken by our firm. Several motions were prepared and handled by our firm and the removal to the Federal Court was contested. We appeared in court at least four or five times" (Tr. 18).

Xedes' affidavit was read in evidence and he testified that at no time had he employed an attorney. That Mr. Laughlin was not his attorney. His affidavit is set out in full in Trans. page 20.

A certified copy of the judgment rendered in the United States District Court for the Western Division of the Western District of Missouri is set out in full at page 19 of the transcript of record.

I. P. Golmis testified that before any suit was filed he met Xedes and another party on the streets of Kansas City and asked where they were going. They said they were going up to settle a claim they had against the Union Pacific, and they asked him to go along and assist them. So they went to Mr. Watson's office and Golmis acted as an interpreter for Xedes. Xedes wanted something like eight hundred or a thousand dollars to settle the case.

Golmis further testified:

"I think Mr. Watson told me at that time that Mr. Laughlin was in the case and he couldn't settle with Xedes. Mr. Watson told me to tell Xedes that he was under contract with Mr. Laughlin to handle the case, and I asked Xedes and he said he didn't know anything about it. He spoke something about Mr. Coliopolous calling on him a couple of times at the hospital, I think, but he didn't say he signed any contract or anything of the kind, and I asked him the second time, to get it right, and he said he didn't know anything about it. They couldn't make a settlement with Mr. Watson, and then they went out to hunt an attorney, and I believe I recommended Davis & Holmes. I told them I knew two nice young men and told them if they wanted an attorney I could get them for him" (Tr. 22, 23).

Judgment was entered in the United States District Court on January 25, 1915 (Tr. 19), for the sum of $550.00 and costs, and that *the plaintiff have* an execution therefor. The plaintiff in error paid the amount of the judgment and costs to the clerk of the United States District Court, and on the 3d day of March, 1915, the following entry was made by the clerk of that court:

"March 3, 1915.

Judgment and costs is this day satisfied in full and the receipt of $550.00 and costs is herewith acknowledged.

Attest: John B. Warner, *Clerk*.

Christ Xedes,
Davis & Holmes,
By J. V. Holmes."

Then follows the certificate of the clerk as follows:

"United States of America, Sct.

I, John B. Warner, Clerk of the District Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a true copy of the judgment and the satisfaction thereof, in the cause therein named, as fully as the same appears in my office" (Trans. 19).

Thereafter, in November, 1915, the defendant in error filed a suit in the Justice Court of S. R. Layton, in Kaw Township, Jackson County, Missouri, against the plaintiff in error, which petition is set out in the transcript of record, at page 6.

The petition set forth that on the 25th day of January, 1915, the plaintiff in error, "without the knowledge or consent of this plaintiff, compromised and settled said claim or cause of action, by paying to the said Christ Xedes the sum of $550.00, and the said Christ Xedes then and there released said claim or cause of action to the defendant. That by and through the said act of the defendant in settling and compromising said action without the consent of the plaintiff, the plaintiff was deprived of his fee of one-half of the amount paid by defendant in said compromise and settlement and of his lien upon said cause of action, allowed by the statutes of the State of Missouri, and the plaintiff prays judgment for $275.00."

Under the Missouri practice act, a suit before a justice of the peace does not require any written answer, but the statute provides that the general issue shall prevail in all cases filed in a justice court, and under the Missouri practice act, any defense can be made under the general issue.

The defense interposed was that the amount, to-wit, $550.00, was paid to the Clerk of the United States District Court for the Western District of Missouri and that judgment was satisfied by the entry shown in the record, and that such payment was a satisfaction of all liability of plaintiff in error to Xedes, or any attorney for Xedes, and that the State of Missouri could not enact any law giving a lien upon a judgment rendered in the United States District Court on a cause of action which arose in another state.

Judgment was rendered in the Justice Court against the plaintiff in error for $275.00 and costs, and defendant appealed

the case to the Circuit Court of Jackson County, Missouri, at Kansas City. The case was heard in that court *de novo* on the 10th day of May, 1916, and under the instructions of the court, the jury returned a verdict against the plaintiff in error, for the sum of $275.00.

In order to prove the allegations of a compromise and settlement as alleged by defendant in error, he offered testimony of Raymond E. Watson, as follows (Tr. 16):

> "I was one of the attorneys interested in the suit of Christ Xedes against the Union Pacific Railroad Company. That case was tried without a jury before Judge Van Valkenburg, and judgment rendered for $550.00, which amount was paid to the clerk of the court in the settlement of that judgment. That was for the injury involved in this suit."

This was the only money shown to have been paid Xedes, and defendant in error recovered one half of the amount paid to John B. Warner, clerk, in satisfaction of the judgment rendered in the Federal Court.

The plaintiff in error offered in evidence a certified copy of the judgment in the United States District Court, showing that it paid the money to the clerk of the United States District Court, in satisfaction of the judgment rendered in that court.

On the trial of the case, the plaintiff in error requested the Circuit Court of Jackson County to instruct the jury as follows:

> "The court instructs the jury that if you find and believe from the evidence, the said Christ Xedes did employ the plaintiff, L. A. Laughlin, to bring suit for him against the defendant, the Union Pacific Railroad Company, yet if you further find and believe from the evidence that before any suit was brought, the said Christ Xedes discharged the said L. A. Laughlin and employed other counsel, who prosecuted a suit against the said defendant, in the United States District Court of the Western Division of the Western District of Missouri, at Kansas City, to a judgment in said United States District Court, and that the said Union Pacific Railroad Company paid the amount of said judgment to the clerk of the United States District Court at Kansas City, Missouri, in satisfaction of said judgment therein, then you are instructed that the defendant is not liable to the plaintiff in this action for any fees, and your verdict must be for the defendant."

This instruction was refused and plaintiff in error duly excepted at the time (Tr. 25).

Plaintiff in error also asked a peremptory instruction at the close of the case for defendant in error, which is set out in the transcript of record at page 17.

On a motion for new trial, plaintiff alleged as a ground for setting aside the verdict, that the court erred in refusing to give instruction V asked by plaintiff in error, and for the further reason that the cause of action, in favor of Christ Xedes, arose in the State of Kansas, and that suit was brought in the Jackson County Circuit Court by the firm of Davis & Holmes, attorneys for said Xedes, and the case was thereafter removed to the United States District Court for the Western Division of the Western District of Missouri, at Kansas City, and was tried in said court and judgment rendered therein; and that in pursuance of sections 1606, 1607, 1608, 1644 and 1645 of the United States Compiled Stat. for 1913, the defendant paid the judgment and costs to John B. Warner, Clerk of the United States District Court, as provided by said sections, and that such payment was a complete satisfaction of the liability of plaintiff in error to Xedes or any attorney for Xedes, and that the verdict and judgment in the Jackson County Circuit Court establishing a lien imposed a liability upon the defendant in respect of the payment of the judgment to the clerk of the United States District Court, in violation of the statutes of the United States, aforesaid; and that the verdict and judgment of the State Court imposed conditions upon the payment of said judgment of the United States District Court, in the case of *Xedes* v. *Union Pacific Railroad Company*, not imposed by the acts of Congress, and that to sustain this judgment of the Circuit Court, deprived plaintiff in error of the protection given by United States Statutes aforesaid, in paying the amount of said judgment to the clerk of the United States District Court in satisfaction of the judgment in that court and such right to interpose such defense in bar of this action was denied plaintiff in error; that a right was claimed under the statutes of the United States aforesaid by virtue of the payment of said judgment, which was denied by the Circuit Court of Jackson County, Missouri. The ninth ground of the motion for new trial challenged the sufficiency of the judgment in the Circuit Court of Jackson County, for the

reason that the payment of money to the clerk of the United States District Court was a satisfaction of said judgment, and that thereafter no independent action could be brought or maintained in the state courts by reason of the payment of such money to the clerk of the United States District Court (see Tr. 27 to 30, inclusive, 7, 8, 9 and 10th grounds of motion for new trial).

The refusal to give instruction No. 5 asked by plaintiff in error was urged as error in the Circuit Court and also on appeal to the Kansas City Court of Appeals, and the 5th assignment of error in the Kansas City Court of Appeals set out that the trial court erred in refusing to give said instruction V, which is set forth in full at page 25 of the Transcript of Record herein.

Error was also assigned in Kansas City Court of Appeals to the giving of plaintiff's instruction 1, which is set out on page 24 of the Transcript of the Record.

Also plaintiff in error claims a federal question was raised properly in the Kansas City Court of Appeals in the 11th, 12th, 13th, 14th and 15th assignments of error filed in that court and which are found in the Transcript of Record, pages 34, 35 and 36.

After the opinion was handed down by the Kansas City Court of Appeals, a motion for rehearing was filed which was overruled Also at the same time the motion for a rehearing was filed. Plaintiff in error also filed a motion to transfer said case to the Supreme Court of the State of Missouri (see Trans. pages 41, 45 and 46). These motions were both overruled and the judgment of the Kansas City Court of Appeals became final, and is the judgment of the highest court in the state to which plaintiff in error could go for redress.

ARGUMENT.

I.

The motion to dismiss writ of error or affirm the judgment is based upon the proposition that, the question in the case at bar is the construction to be given the attorney's lien statute of the State of Missouri. The validity of the state statute is not assailed, but the issue involved is, what force and effect shall be given to the statute. This is a very erroneous conception of the questions presented by the record.

The statute of Missouri, Section 964, R. S. 1909, giving an attorney a lien provides:

> *"From the commencement of an action,* * * * the attorney who appears for a party has a lien upon his client's cause of action, or counterclaim, which attaches to a verdict, report, decision or judgment in his client's favor and the proceeds thereof in whosesoever hands they may come, and cannot be affected by any settlement between the parties before or after judgment."

The attorney's lien law of Missouri was construed by the Supreme Court of the State of Missouri in the case of *Taylor et al.* v. *Transit Co.*, 198 Mo. 715. The court in construing this act said:

> "The plain and obvious meaning of the section is that an attorney of record shall have a lien upon his client's 'cause of action' from the commencement of the suit thereon; and if afterward the same becomes merged in a 'verdict, report, decision or judgment in his client's favor,' such lien shall attach thereto and cannot be affected by 'any settlement between the parties before or after judgment.' This lien is upon the cause of action until merged and then it attaches to the thing into which the cause of action is merged."

In the case of *Bishop* v. *United Railways*, 106 Mo. App. l. c. 231, it is said:

> "It is true that the section grants the lien only in favor of 'the attorney who appears,' but these words may very properly be held to mean 'any attorney who appears' (*Noyes* v. *Children's Aid Society*, 3 Abbot's New Cases, 36), which is in accord with the true purpose of the act. In this respect,

it is of some, though perhaps slight, significance, and in stating the meaning of the section, our Supreme Court used the more indefinite article 'an' instead of the article 'the.' Thus the plain and obvious meaning of the section is that an attorney of record shall have a lien, etc." (*Taylor* v. *Transit Co.*, 198 Mo. 715.)

The defendant in error never instituted any suit, nor appeared in any suit brought by Christ Xedes against the plaintiff in error. All he did was to get a contract, give notice of an attorney's lien, and getting statements. Suit was brought by Davis & Holmes some ten to twelve months after defendant in error procured the alleged contract (Trans. 17).

The specific federal question, urged by the plaintiff in error in the Circuit Court of Jackson County, and also in the Kansas City Court of Appeals, was that the cause of action arose in another state, that suit was brought in the Circuit Court of Jackson County by Davis & Holmes, attorneys for Xedes, and that it was removed to the Federal Court, and that judgment was entered in the Federal Court, and that the amount of money paid by the Union Pacific Railroad Company was paid to John B. Warner, clerk of the United States District Court in satisfaction of the judgment in the Federal Court and satisfaction of said judgment was entered in the Federal Court. That, therefore, the plaintiff in error was acquitted of all liability of every kind and character by reason of such payment of money into the United States District Court, as provided by the Federal statutes, and that it could not be made liable to defendant in error in another suit brought in the state court to recover one-half of the amount which had been paid to the United States District Court.

And second: That the legislature of the State of Missouri could not create an attorney's lien upon a cause of action which arose in another state and was prosecuted to a judgment in the Federal Court where the amount of such judgment was paid to the clerk of said United States District Court in satisfaction of such judgment. That under such state of facts a state could not create a lien which attached to a judgment in the Federal Court, and thereby debar the judgment debtor from discharging all liability by paying such judgment to the clerk of such Federal Court.

If the defendant in error is entitled to recover any money in this case, it must arise out of the payment of this sum of money

to the clerk of the United States District Court. No money was paid to any other person for or on behalf of the said Xedes, and no compromise or settlement was shown to have been made between Xedes and the plaintiff in error. So that the undisputed facts are that the alleged cause of action of defendant in error arose out of the payment of the amount of the judgment in the United States District Court to the clerk of that court, and the defense of the plaintiff in error to the alleged cause of action was based upon the payment of this money to the clerk of the United States District Court, in satisfaction of the judgment in said court, and asserts that such satisfaction was complete against every person claiming under Xedes. And plaintiff in error claims that this raised a specific federal question under section 709, R. S. of the United States, which provides for a review of the judgment of the highest court of a state by the United States Supreme Court, where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of or commission held, or authority exercised under the United States, and the decision is against the right, title, privilege and immunity especially set up and claimed by either party under such constitution, treaty, statute, commission or authority.

In the case of *Acme Harvester Company* v. *Lumber Co.*, 222 U. S. (l. c.) 305, this court said:

> "The denial of a right claimed under the judgment of a court of the United States lays the foundation for a review in this court."

In the case of *Texas & Pac. Ry. Co.* v. *Johnson*, 151 U. S. 79, in passing upon whether a Federal question was raised in the record, this court said:

> "The validity of no treaty or statute of the United States was brought in question nor was any claim of right or immunity set up under the constitution or any treaty or statute of or commission under, the United States, so that we are confined to the inquiry, whether the validity of an authority exercised under the United States, in any other regard than above indicated, or any claim under such authority was denied. And as the defense was directly made that the plaintiff below was subject to the order of October 26th, and must, therefore, resort to the court which entered it for the collection of his claim, and could not recover a judgment *in personam* collectible by the ordinary process; and, moreover,

that his claim was thereby barred; the overruling of that defense may properly be held to have amounted to a decision against the validity of the order, or against a claim of right or immunity thereunder."

In the case of *Commercial Publishing Company* v. *Beckwith*, 188 U. S. 569, this court said:

> "As in the complaint, the plaintiff in error unquestionably set up a right to recover as the result of a judicial sale made under decrees, both of courts of the United States and of a State, Federal questions exist in the record, and the motion which has been made to dismiss is therefore denied."

So in the case at bar, plaintiff in error paid the amount of the judgment to the clerk of the United States District Court, in satisfaction of the judgment rendered in that court, and it claims immunity by reason of that payment against any claim of Xedes, or for any attorney for Xedes. Plaintiff in error claims, and claimed at the trial below, that such payment constituted a complete satisfaction of said judgment under the federal statutes heretofore referred to; and that such privilege and immunity from further suit or liability was claimed in the state court, and that right, privilege and immunity was denied. We submit that such denial raises a federal question under the foregoing authorities.

In the case of *Kansas City S. Railway Co.* v. *Guardian Trust Co.*, 240 U. S. l. c. 178, this court, in speaking of a motion to dismiss, said:

> "But the Cambria bill asserted a lien under the judgment of a Federal Court, and the petition of the appellant asserted title to a decree of a Federal Court so that the decree may be affirmed under an appeal."

In the case of *Pittsburgh, etc., Ry. Co.* v. *Loan & Trust Co.*, 172 U. S. l. c. 507, it was contended by the defendant in error that this court had no jurisdiction to review the final judgment of the Supreme Court of Ohio, because certain parties were not affected by the proceedings in the foreclosure suit instituted in the Circuit Court of the United States. This court said (l. c. 507):

> "Upon looking into the record, we find that the defendant railway company claimed in its answer that if a lien at any time attached to the property in question to secure the 36 bonds purchased by Lynde, such lien was wholly divested and discharged by the above proceedings in the Federal

courts under which that company claims title. This, it would seem, was such an assertion of a right and title under an 'authority exercised under the United States' as gives this court jurisdiction to reexamine the final judgment of the state court."

This court then quotes from *Dupasseur* v. *Rochereau*, 21 Wall. 130, 134, 135, as follows:

"In *Dupasseur* v. *Rochereau*, 21 Wall. 130, 134, 135, which was a suit to subject certain lands in satisfaction of a debt secured by mortgage, and for the amount of which debt judgment had been obtained, the defense was rested upon the ground that the defendant purchased the property at a sale made under a judgment of the Circuit Court of the United States for the Eastern District of Louisiana, in a named case, 'free of all mortgages and incumbrances and especially from the alleged mortgage of the plaintiff.' This defense was not recognized by the Supreme Court of Louisiana, and the case was brought to this court by writ of error. One of the questions considered was as to the jurisdiction of this court under the act of February 5, 1867, which gives a writ of error to the highest court of a state in which a decision in the suit could be had, 'where any title, right, privilege or immunity specially set up or claimed under * * * such authority.' Mr. Justice Bradley, delivering the opinion of the court, said: 'Where a state court refuses to give effect to the judgment of a court of the United States rendered upon the point in dispute, and with jurisdiction of the case and the parties, a question is undoubtedly raised which, under the act of 1867, may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States establishing the Circuit Court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the Constitution; and it is clearly within the chart of appellate power given to this court, over cases arising in and decided by the state courts."

This court also quotes from the opinion of Mr. Justice Matthews, in *Crescent Live Stock Co.* v. *Butchers Union*, 120 U. S. 141, as follows:

"It must, therefore, be conceded that the sole question to be determined is, did the Supreme Court of Louisiana, in deciding against the plaintiffs in error, give proper effect to

the decree of the Circuit Court of the United States, subsequently reversed by this court? It is argued by counsel for the defendant in error that this does not embrace any Federal question; that the effect to be given to a judgment or decree of the Circuit Court of the United States sitting in Louisiana by the courts of that state is to be determined by the law of Louisiana or by some principle of general law as to which the decision of the state court is final; and that the ruling in question did not deprive the plaintiffs in error of 'any privilege or immunity specially set up or claimed under the Constitution or laws of the United States.' But this is an error. The question whether a state court has given due effect to the judgment of a court of the United States is a question arising under the Constitution and laws of the United States, and comes within the jurisdiction of the Federal courts by proper process, although, as was said by this court in *Dupasseur* v. *Rochereau*, 21 Wall. 130, 135, 'no higher sanctity or effect can be claimed for the judgment of the Circuit Court of the United States rendered in such a case, under such circumstances than is due to the judgments of the State Courts in a like case, under similar circumstances.' "

And in *Ry. Co.* v. *Trust Co.*, 172 U. S. l. c. 510, this court said:

"But it is within the jurisdiction of this court to determine, in this case, whether such due effect has been given by the Supreme Court of Louisiana to the decrees of the Circuit Court of the United States here drawn in question. The decree of the Circuit Court was relied upon in the state court as a complete defense to an action for malicious prosecution, on the ground that it was conclusive proof of probable cause. The Supreme Court of Louisiana, affirming the judgment of the inferior state court, denied to it, not only the effect claimed, but any effect whatever."

So in the case at bar, the plaintiff in error set up a satisfaction of the judgment rendered in the Federal Court by payment of the amount of money adjudged due Xedes to the clerk of the United States District Court, and this payment was relied upon as a complete defense and satisfaction of any claim that Xedes had or any claim his attorneys might have. In short, it was contended that this payment of money, in satisfaction of said judgment, was a complete defense to the action sued upon in the state court. This raised a federal question under all these authorities.

II.

Satisfaction of judgment by payment to the clerk discharged all liability of plaintiff in error to Xedes or any one claiming under him.

In *Williams* v. *Bradley,* 187 Ala. 158, 65 Southern Rep. 534, the plaintiff, an attorney, brought a suit to establish an attorney's lien against the judgment debtor where an execution had been issued and the land of the judgment debtor was levied upon and sold under the execution, and the judgment creditor purchased the land for the amount of the judgment and costs. Thereafter, the judgment debtor redeemed said land from said sale under execution by paying to the judgment creditor the amount of the judgment and costs. Thereafter, the attorney sought to enforce his lien against the judgment debtor, claiming that he had a lien upon the judgment and also on the proceeds arising from the sale under the execution issued on said judgment.

In passing upon whether the attorney had such a lien, the Supreme Court of Alabama said:

> "The subject matter of the lien, viz., the judgment, becomes extinct, if the judgment is paid in full. 'When property is levied on and sold by direction of the plaintiff in execution, and he bids it off at a price sufficient to pay the entire judgment, the law appropriates the bid to the discharge of the execution and satisfaction of the judgment, notwithstanding he may refuse to accept the property. *Thomas Gazenor,* 90 Ala. 537, 8 So. 153, 24 Am. S. R. 830; *Johnson* v. *Motlow,* 157 Ala. 405, 47 So. 568.' Manifestly, that which by law's orderly and valid process has been made, or becomes extinct, cannot be or remain the subject of the charge of a lien. *With this judgment extinguished in a perfectly lawful manner by levy upon a sale of the defendant's property, certainly there could be no possible further liability against or exaction of the defendant in the judgment. No fraud of any character is charged or imputed to him. He was wholly acquitted when the judgment was satisfied. His redemption of the land from the purchaser at the execution sale is not shown to be effected with any mali fides. The plaintiff's remedy for his compensation is at law against his client."* (Italics ours.)

In Black on Judgments, Vol. 2, Sec. 986, in speaking of how judgments may be satisfied, it is said that the judgment debtor may pay to the plaintiff creditor, or his attorney of record, the amount of the judgment, or

"the debtor may also pay the money to the clerk of the court before execution issues, or after execution has been returned, but the clerk has no authority to receive payment while the execution is in the hands of the sheriff. Nor has the clerk the power to receive payment of the debt before it has been reduced to judgment. But if he receives the money and retains it until after judgment and by some plain and unequivocal act shows an intention to hold the money in his official capacity and apply it to the payment of the judgment, the judgment will be discharged. If the debtor pays the amount of judgment to the sheriff, who holds an execution for its collection, he is entitled to have the judgment entered as satisfied, although the creditor never receives the money." Citing *Beard* v. *Milliken*, 68 Ind. 231; *Governor* v. *Reed*, 38 Ala. 252.

In *Howard* v. *United States*, 184 U. S. 673, this court held that payment to a clerk of the United States Court by a suitor in court was a satisfaction of the claims made against such suitor. In passing upon the right to pay money to the clerk of a United States District Court this court said:

"A well considered case upon this general subject is that of *McDonald* v. *Atkins*, 13 Neb. 568. That was an action on a clerk's bond to recover the amount received by him from a sheriff who had collected it on an execution. The point was made that the clerk was not authorized by statute to accept payment of a judgment, and so the court of original jurisdiction held in that case. The Supreme Court of the State said: 'No one can doubt, we think, that this ruling was in direct conflict with the general understanding of the legal profession of this state as to the duty of court clerks in the receipt and disbursement of money paid upon judgments, from the first organization of our judicial system, through all its changes, down to the present time. Indeed, we doubt exceedingly that any one, especially a practicing lawyer, has ever supposed that upon the rendition of a money judgment, the defendant could not prevent a further accumulation of costs and interests, and have a satisfaction legally entered of record, by at once paying to the clerk of the court the amount which it calls for. If he could not—if clerks are really without authority to receive money on judgments in their custody, then to whom, in the absence of the plaintiff and his attorney, could payment be legally made? * * * While it is true that we have no statute which in express terms declares that the clerks of the several courts shall accept payment of judgments in their custody, it is very evident that the legislature contemplated and intended that they should do so. * * * And

even in the absence of such provision, can it be doubted that a party against whom a money judgment is sought by action may, upon being summoned, pay the amount demanded 'into court,' and thereby prevent the making of any further costs? But how is it to be effected? In the case of inferior courts—those not of record, and unprovided with clerks—the payment can, of course, only be made to the judge or magistrate in person; but in courts of record, where all the steps taken in the progress of the case, from the commencement to the satisfaction of final judgment, are recorded and preserved, and where a clerk for the performance of this duty is specially provided, it is otherwise. In these courts payments of money are never made to the judge, but the uniform practice in this state has always been to make them to his clerk, to whose custody and care the files, records, and whatsoever else relates to cases in courts, are confided. And this practice, so universal, although not positively directed by any act of the legislature, conflicts with none, and, as we have shown, is recognized by and in perfect harmony with several.' These observations are strikingly applicable in the present case."

The case of *Blake et al.* v. *Hawkins*, 19 Fed. 204, the court in construing the force and effect of payment of money to the clerk of the United States District Court, says:

"The controversy depends upon whether or not the clerk received the money under an order of this court. This seems too plain for discussion. The order of the court was its judgment. That was, that the defendants pay to the plaintiffs the amount to which they were entitled. It was under that order that the defendants paid the sum recovered to the clerk. They might have awaited an execution, or, if the money were in the hands of a trustee or officer who would be controlled by the order of the court, an order directing such officer or trustee to pay as should be ordered. But it was safe for them to pay the clerk. The judgment and his official bond, one or both, were their protection. Had there been no order of the court, they could not have safely paid it. He would have been only their agent, or the agent of the plaintiff. The judgment under which, and under which alone, they paid the money, made him the agent of the law, and threw around the payment the security of the bond which the statute requires. *If the clerk had failed to pay the amount of the judgment to the plaintiffs, it could not have been again collected from the defendants.*" (Italics are ours.)

In the case of *In Re Finks*, 41 Fed. 383, the court, in speaking of the force and effect of payment of money to the clerk of a court, said:

"The payment of money into the registery of the court, through the clerk, as the servant and agent of the court, where there is a fund under the control of the court, and where there is no hand designated to receive it, has been in existence from the foundation of the courts and is too firmly fixed to be successfully assailed as not being authorized by an act of Congress or rule of court prescribed in pursuance of the act of Congress."

In the case of *Howard* v. *United States*, Justice Adams, who tried the case at the Circuit, used the following language:

"It is my opinion that in imposing upon clerks of the Circuit Court the duties above alluded to, which so necessarily and vitally affects the interests of suitors within its courts, and in requiring from such clerk a bond for the faithful discharge of his duties, the United States, by necessary legal intendment, thereby consents to the use of its name by suitors wronged by official misconduct of the clerk, in a suit against the clerk or his sureties on his official bond. This implied authority or necessary legal intendment becomes the more apparent when it is considered that the clerk's office is an agency of the United States government, ordained and established for the use and convenience of its people. The money intrusted to its clerk is, in a large sense, money which the government has undertaken to keep for its people."

In the case of *Martin Co.* v. *Shannonhouse*, 203 Fed. 517, under an attachment proceedings, a levy was attempted to be made upon proceeds of a judgment recovered in the Federal District Court, and which had been paid to the clerk of that court. The court, after quoting the statute directing how moneys should be paid into court, and quoting the statutes that provide that no money deposit shall be withdrawn except by order of the judge of the court, etc., the court said:

"It is therefore generally held that property *in custodia legis* is not subject to attachment. 3 Stand. Enc. Pro. 280. The question presented here has been decided in a well considered opinion, in which all of the decided cases are cited, by District Judge Waddill, of the Eastern District of Virginia. In *Corbitt* v. *Farmers' Bank* (C. C.) 114 Fed. 602, he says:

"The position taken by counsel for complainant, that the court, having entered its final order in respect to the money in question, had exhausted its jurisdiction over the same, and that such funds then remained subject to seizure by attachment or other legal process, as any other

property belonging to defendant bank, is equally fallacious. A conclusion in favor of parties litigant, to any controversy, would be barren of good, if the court rendering the decision was powerless to cause its decrees and orders to be put into operation and duly executed; and such a result as to money in the court's own registry would, indeed, leave it in a helpless and pitiable plight.'"

In the case of *Lawson* v. *Telephone Co.*, 178 Mo. App. l. c. 136, the Kansas City Court of Appeals decided the specific question herein involved. This was an action to enforce an attorney's lien under a Missouri statute. The court said:

"In the motion for rehearing, it is urged that payment of the judgment to Robertson and Yeater, two of plaintiff's counsel, must protect defendant, because it was the payment of a 'final judgment paid to the only officers of the court authorized to receive the amount of money due on the judgment.' And the question is asked, if the payment of the judgment to a portion only of plaintiff's counsel will not protect, what is one to do against whom a final judgment has been rendered?

"The trouble with this contention lies in the assumption of the minor premise that Robertson and Yeater are 'the only officers of the court authorized to receive the amount of money due on the judgment.' *If a defendant wishes to avoid all responsibility in the matter it can do so by placing the money in custodia legis, that is, by paying it into court, or depositing it with the clerk, throwing upon the law and the court the responsibility of saying where and to whom it shall go.* * * *

"If defendant had paid the judgment into court or to the clerk, it would have been released of all liability, but not otherwise."

Under the foregoing authorities, plaintiff in error contends, that the payment of the amount of the judgment rendered in the United States District Court to the clerk of that court, in the case of *Xedes* v. *Union Pacific Railroad Company*, constituted a complete satisfaction of all liability of the Union Pacific Railroad Company to Xedes, or his attorneys. The money was *in custodia legis*, and before it could be withdrawn from the court's custody and control an order to that effect had to be made by the judge of that court.

Our Supreme Court, in the case of *Wait* v. *Railroad*, 204 Mo. l. c. 502, said:

"(5) And if a percentage contract exists and a judgment has been obtained which has not became a finality (for instance, where a motion for new trial is pending and undisposed of, or where an appeal has been granted), then a compromise settlement and release in which plaintiff's attorney is ignored and to which he does not assent, does not destroy his lien. But the release of the judgment may be opened up on motion in the nature of a special proceeding and the discharge be set aside *pro tanto, so as to let in his lien.*"

And again, l. c. 503, the court said:

"If the reasoning of *Young* v. *Renshaw, supra,* as approved by Fox, J., in *O'Connor* v. *Transit Co., supra,* is to be followed (and no reason is apparent to us why it should not be followed, when a case in point arises), then the same remedy set forth in the fifth hypothesis, above, is open to an attorney where the judgment is compromised and satisfied without his consent, after it has become a finality."

The Supreme Court of Missouri thus recognized that where a judgment has been satisfied by compromise or settlement between the parties, that the satisfaction must be set aside in order to let in the lien. The necessary effect of such a ruling was that no lien attached while the judgment remained satisfied. In the case last cited, the judgment was compromised between parties without paying the money into court. We have been unable to find any case decided by the Supreme Court of Missouri holding that the attorney could maintain an action against the judgment debtor where the amount of the judgment had been paid into court and the money was *in custodia legis.*

We submit that if an execution had been issued out of the United States District Court against the plaintiff in error to collect said judgment and the United States Marshal had levied upon property of plaintiff in error and sold the same to satisfy said judgment and had paid the money to the clerk of the United States District Court, who in turn paid it out to Xedes and his attorneys of record, there could be no liability of plaintiff in error to a subsequent suit to recover one-half the amount so collected by the United States Marshal. But if the contention of defendant in error is correct, he could still proceed against the plaintiff in error and sue for one-half of the amount the United States Marshal collected under the execution.

But such contention is decided adversely in the case of *Williams* v. *Bradley, supra,* where it is held specifically that where execution

is issued against the judgment debtor and the marshal levies the execution and sells property and pays money to the clerk of the court in which the judgment is entered, in satisfaction of such judgment, that there is no further liability on the part of the judgment debtor to an attorney for any lien under the statutes. We submit the same rule applies, where the judgment debtor pays the amount of such judgment to the clerk of the United States District Court without waiting for an execution to be issued and levied upon his property and a sale had thereunder.

If the position of the plaintiff in error is correct, that the payment of the amount of the judgment in the case of *Xedes* v. *Union Pacific Railroad Company*, to John B. Warner, Clerk of the United States District Court, constituted a satisfaction of that judgment, then it was satisfied as to all parties so far as any liability on the part of plaintiff in error was concerned. The money was *in custodia legis*, and it was beyond its power to direct or say how or to whom said money should be paid. There was no further liability on its part to any person whatever, and the Federal question in this case to be decided is, did such payment to the clerk of the United States District Court, in satisfaction of said judgment under the facts shown in evidence, constitute a defense to the cause of action alleged in the petition of defendant in error? The force and effect of such payment was a right, title and immunity set up and claimed under the Acts of Congress and the legal effect of the payment of a judgment of the United States District Court to an officer of the United States Government, raised a federal question under all the foregoing authorities.

III.

Plaintiff in error also contends that the laws of Missouri giving an attorney a lien upon the cause of action from the time of the commencement of the suit, only applies to suits begun and prosecuted to a judgment in the state courts, but does not apply to a cause of action which arose in another state and is prosecuted to a judgment in the Federal Court sitting in this state. That the attachment of a lien is a matter of substantive right and not a mere method of procedure, and that it is not competent for the legislature of the State of Missouri to attach any conditions to the payment of a judgment in the Federal Court.

An analogous question was decided in the case of The Roanoke, 189 U. S. 185. The question involved in that case was whether the states may create liens for labor and supplies furnished as against foreign vessels (vessels owned in other states or countries), and under such circumstances as would not authorize a lien under general maritime law. In passing upon the question, this court said:

> "That it is competent for the states to create liens for necessaries furnished to domestic vessels, and that such liens will be enforced by the courts of admiralty under their general jurisdiction over the subject of necessaries."

This court then goes on to say:

> "The question involved in this case, however, is whether the states may create such lien as against foreign vessels (vessels owned in other states or countries), and under such circumstances as would not authorize a lien under the general maritime law. The question is one of very considerable importance, as it involves the power of each state, which a vessel may visit in the course of long voyage, to impose liens under wholly different circumstances and upon wholly different conditions."

This court quotes with approval from the opinion of Mr. Justice Story, in the case of The Chusan, 2 Story, 455, as follows:

> "This statute is, as I conceive, perfectly constitutional, as applied to cases of repairs of domestic ships, that is, of ships belonging to the ports of that state. * * * *But in cases of foreign ships, and supplies furnished to them, the jurisdiction of the courts of the United States is governed by the Constitution and laws of the United States, and is, in no sense governed, controlled, or limited by the local legislation.*" (Italics ours.)

And in this Roanoke case, this court said:

> "While no case involving this precise question seems to have arisen in this court, we have several times had occasion to hold that where Congress has dealt with a subject within its exclusive power, or where such exclusive power is given to the Federal courts, as in cases of admiralty and maritime jurisdiction, it is not competent for states to invade that domain of legislation, and enact laws which in any way trench upon the power of the Federal government. Cases arising in other branches of the law furnish apt analogies. The principle is stated in a nutshell by Chief Justice Marshall in *Sturges* v. *Crowninshield*, 4 Wheat. 122, 193. 'But it has

never been supposed that this concurrent power of legislation extended to every possible case in which its exercise by the states has not been expressly prohibited. The confusion resulting from such a practice would be endless * * * Whenever the terms in which a power is granted to Congress, or the nature of power, require that it should be exercised exclusively by Congress, the subject is as completely taken from the state legislatures as if they had been expressly forbidden to act on it.'"

In *Pritchard* v. *Norton*, 106 U. S. (l. c.), 129, this court said:

"The principle is, that whatever relates merely to the remedy and constitutes part of the procedure is determined by the law of the forum, for matters of process must be uniform in the courts of the same country; but whatever goes to the substance of the obligation, and affects the rights of the parties, as growing out of the contract itself, or inhering in it or attaching to it, is governed by the law of the contract."

The lien of an attorney is a matter of substantive right, and grows out of the obligations imposed by this statute and is not a mere matter of remedy or form of procedure which the United States Court must apply to a cause of action arising in another state and prosecuted to a judgment in such Federal Court.

In the case of *Hyde, et al.* v. *Stone*, 20 Howard (U. S.), l. c. 175, this court said:

"But this court has repeatedly decided that the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the states, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. In many cases, state laws form a rule of decision for the courts of the United States, and the forms of proceeding in these courts have been assimilated to those of the states, either by legislative enactment or by their own rules But the courts of the United States are bound to proceed to judgment, and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. (*Suydam* v. *Broadnax*, 14 Pet. 67; *Union Bank* v. *Jolly, Admr.*, 18 How. 503.)"

Plaintiff in error contends that it is beyond the power of the State of Missouri to pass a law attaching any terms or conditions

to the payment of a judgment of the United States District Court, to the clerk of that court in satisfaction of said judgment, or impose any lien upon any judgment rendered in said court, on a cause of action arising in a sister state.

To give such a statute such force and effect renders same unconstitutional and void, because it is not due process of law. It takes from a judgment debtor the right to plead satisfaction of such judgment by payment of amount of said judgment to the officers authorized by Congress to receive such payment, and such judgment debtor is thereby deprived of his property without due process of law. In *Pritchard* v. *Norton, supra,* this court held that a law which deprived a suitor of a legal defense, denied such suitor due process of law in violation of the Constitution of the United States.

We respectfully submit that the motion to dismiss writ of error or to affirm the judgment should be overruled.

Respectfully submitted,

N. H Loomis,
R. W. Blair,
I. N. Watson,
Attorneys and Counsel for Plaintiff in Error.

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Citations.

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No. 623.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

UNION PACIFIC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

VS.

L. A. LAUGHLIN, DEFENDANT IN ERROR.

IN ERROR TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

STATEMENT.

In November, 1915, defendant in error filed a statement before a Justice of the Peace of Jackson County, Missouri, against plaintiff in error for damages for the deforcement of an attorney's lien given by the statutes of the State of Missouri. The statement (Rec. p. 6) alleged that defendant in error was an attorney at law duly admitted to practice in the courts of the State of Missouri, and was engaged in the practice of law at

Kansas City, Missouri; that plaintiff in error was a railroad corporation operating a railroad through the State of Kansas and terminating in Kansas City, Missouri; that one, Christ Xedes, having theretofore sustained injuries through the negligence of plaintiff in error, while in its employ at Onaga, in the State of Kansas, employed defendant in error on November 12th, 1913, as his attorney to prosecute a suit against plaintiff in error for damages for said injuries; that by said contract of employment said Christ Xedes agreed to pay defendant in error one-half of all sums which should be recovered in said suit or by compromise of the same; that on November 17th, 1913, defendant in error served a notice in writing on plaintiff in error that he had such an agreement with Xedes, and stating therein the interest which defendant in error had in such claim or cause of action; that after the service of said notice, to-wit, on January 25, 1915, plaintiff in error, without the knowledge or consent of defendant in error, compromised and settled said claim or cause of action with said Christ Xedes by paying him the sum of $550.00; that thereby defendant in error was deprived of his fee of one-half of the amount paid by plaintiff in error on said compromise and settlement, and of his lien upon said cause of action, given by the Statutes of Missouri. The prayer of the statement was for a judgment for $275.00, being one-half of the amount paid by plaintiff in error to said Christ Xedes.

Upon filing the statement a summons was issued and served upon plaintiff in error. Plaintiff in error did

not appear before the justice of the peace and judgment for $275.00 was rendered against it by said justice by default. Thereupon, plaintiff in error appealed from the judgment of the Justice of the Peace, to the Circuit Court of Jackson County, Missouri, where the cause was tried *de novo,* in accordance with the Statutes of Missouri. Plaintiff in error filed no pleadings before the Justice of the Peace, or in the Circuit Court. Under the Missouri practice, this is equivalent to pleading the general issue.

On the trial in the Circuit Court it appeared from the evidence that Christ Xedes was injured while working for the plaintiff in error at Onaga, Kansas, on October 11th, 1913. He came to Kansas City and went to a hospital. While there he sent for an acquaintance and told him that he wanted to bring suit for his injuries. The acquaintance recommended the defendant in error as a suitable attorney to employ. Thereupon Xedes entered into a written contract with defendant in error agreeing to pay him fifty per cent of whatever amount should be obtained in settlement of said claim, either by suit or compromise (Rec. p. 14). On November 17th, 1913, defendant in error served upon plaintiff in error a written notice setting forth his employment by Xedes and stating the interest he had in the claim (Rec. p. 14). At the request of Xedes, defendant in error deferred bringing suit. After getting out of the hospital Xedes employed the law firm of Davis & Holmes to bring suit for his injuries. Defendant in error was not discharged by Xedes and did not know suit had been

brought by Davis & Holmes upon the claim until some time after it had been filed. The suit was filed by Davis & Holmes in the Circuit Court of Jackson County, Missouri, whence it was removed by plaintiff in error to the District Court of the United States, for the Western District of Missouri. In this latter court a judgment by stipulation for $550.00 was entered in favor of Xedes and said sum was paid by plaintiff in error and the judgment satisfied of record on March 3, 1915. The record does not show that the money was paid to the clerk of the United States District Court and then paid to Davis & Holmes by the clerk (Rec. p. 19).

At the close of the evidence plaintiff in error asked the court to give four instructions to the jury (Rec. pp. 24-25). In none of them does plaintiff in error invoke the constitution or statutes of the United States.

The jury returned a verdict in favor of defendant in error for $275.00 and judgment was rendered accordingly. Thereupon plaintiff in error filed motions for a new trial and in arrest of judgment and for the first time set up the claim that by force of the federal statutes, the lien of defendant in error had been cut off by the satisfaction of the judgment in the United States District Court.

These motions were overruled and plaintiff in error appealed to the Kansas City Court of Appeals. That court, upon the hearing of the cause, affirmed the judgment of the Circuit Court in an opinion filed in which the only federal question passed upon, is, that an attor-

ney's lien under the state law can not attach to a judgment or a proceeding in a Federal Court (Rec. p. 40).

Plaintiff in error filed a motion for rehearing, and a motion to transfer the cause to the Supreme Court. The action of the court on these motions, if any has been taken, is not given in the transcript of the record. So far as the record shows these motions are still pending. Plaintiff in error did not apply to the Supreme Court of the State of Missouri for a writ of certiorari as permitted by the Missouri practice.

BRIEF.

The writ of error should be dismissed for want of jurisdiction.

The writ of error (Rec. p. 1) recites as one of the grounds on which it is granted "or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemption, especially set up or claimed under said clause of the constitution, treaty, statute, or commission," etc.

Under Sec. 237 of the Judicial Code as amended by the Act of Congress of September 6th, 1916, the foregoing is not a ground for granting a writ of error but is made a ground for a writ of certiorari, and the writ of error is defective in this respect. All of the assignments of error (Rec. pp. 47-49) are based upon this ground. Each and every one of them invokes the protection of the Fourteenth Amendment to the Federal Constitution, or the Acts of Congress relating to the payment and satisfaction of judgments in United States Courts. Plaintiff in error undertakes in its brief to make the claim that the validity of the Statutes of Missouri relating to attorney's liens was drawn in question but there is nothing of that kind in the assignment of errors, or elsewhere in the record.

Plaintiff in error makes the further claim that the act of the clerk of the United States District Court in

receiving the money in payment of the judgment and satisfying the record was "an authority exercised under the United States," and that the decision was against its validity. No such claim is made in the assignment of errors and if it were so made, it would have no foundation in the record and hence would not give this court jurisdiction. *Millingar* v. *Hartupee,* 6 Wall. 258. The authority of the clerk of the United States District Court to receive the money in payment of the judgment, and satisfy the record is not disputed, but plaintiff in error claims by those acts the attorney's lien of defendant in error was cut off. In other words, plaintiff in error claims an abstract right by virtue of the Acts of Congress regulating the payment and satisfaction of judgments in United States Courts. That this abstract right is not covered by the word "authority," as used in the statute has been held by this court.

In *Telluride Power Company* v. *Rio Grande etc., Ry.,* 175 U. S. 639, 643, this court said:

> It is insisted that the case falls within the first category of cases specified in Rev. Stat. Sec. 709, "where is drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision is against their validity." But the cases in which this clause has been applied are those wherein the validity of a statute, or of an authority exercised by a public official of the United States has been called in question, and not those where a general right is set up under a statute. *McGuire* v. *Commonwealth,* 3 Wall. 387; *Millingar* v. *Hartupee,* 6 Wall. 258; *Daniels* v. *Tearney,* 102 U. S. 415; *Sharp* v. *Doyle,* 102 U.

S. 686; *Buck* v. *Colbath*, 3 Wall. 334. The use of the word "authority" in the third clause in connection with the word "commission" favors the theory that a personal authority was intended and not the assertion of an abstract right created by a statute.

The assignments of error made by plaintiff in error being based upon the ground for granting a writ of certiorari, the writ of error must be dismissed, as was held by this court in *Phila. & R. Coal & Iron Co.* v. *Gilbert*, 38 Supreme Ct. Rep. 58. In that case an action was brought in the state court of New York by a resident of that state to recover for a personal injury sustained by the former while employed in the latter's coal mine in Pennsylvania. In addition to mining coal in Pennsylvania the defendant was doing business in New York, and conformably to the laws of the latter state had designated an agent therein upon whom process against it might be served. The summons was served upon this agent. The defendant filed a motion to set aside the service of the summons on the ground that its consent to be sued in New York could only be implied with respect to causes of action, arising in connection with business the defendant transacts in New York, and to compel defendant to respond to the suit in New York was an invasion of defendant's rights under Sec. 1 of the Fourteenth Amendment to the Constitution of the United States. The motion was overruled and the case proceeded to judgment against defendant on the merits. In the opinion this court said:

> All that was drawn in question by the motion was the validity of the service and the power of the court, * * *, to proceed upon this service to a hearing and determination of the case. It did not question the validity of any treaty or statute of, or authority exercised under the United States. Neither did it challenge the validity of a statute of, or an authority exercised under, any State, on the ground of its being repugnant to the statutes, treaties, or laws of the United States. Challenging the power of the court to proceed to a decision of the merits did not draw in question an authority exercised under the state, for, as this court has said, the power to hear and determine cases is not the kind of authority to which the statute refers. *Bethel* v. *Demaret*, 10 Wall. 537, 540. *French* v. *Taylor*, 199 U. S. 274, 277. It follows that the judgment cannot be reviewed upon writ of error. If a review was desired it should have been sought under that clause of the certiorari provision which reads, "or where any title, right, privilege or immunity is claimed under the constitution," etc. Writ of error dismissed.

The writ of error should be dismissed upon the further ground that there has been no final judgment in this case "in the highest court of a state in which a decision in the suit could be had."

In the case of *Missouri, Kansas, etc., Ry. Co.* v. *Elliott*, 184 U. S. 530, the facts were that a suit was brought in the state court for damages for breach of an injunction bond given in a suit in the United States Court. The defendant contended on the trial that the measure of damages was that given by the United States Courts. The case went upon appeal to the Kansas City Court of Appeals where this contention was passed up-

on adversely to defendant. Thereupon the defendant filed motions for rehearing and to transfer the case to the Supreme Court of Missouri, both of which were overruled. Then the defendant applied to the Supreme Court of Missouri, for a writ of prohibition, and to have the record and proceedings certified to that court. This application was denied. Defendant then sued out a writ of error from this court to the Kansas City Court of Appeals and this court held on that record that the judgment of the Kansas City Court of Appeals was the decision of the highest court in the state in which a decision could be had.

The facts in the case at bar are different. The plaintiff in error filed motions for rehearing and to transfer the case to the Supreme Court but they have not been passed upon by the Kansas City Court of Appeals. No application has been made by plaintiff in error to the Supreme Court of Missouri for a writ of certiorari.

Since the decision in *Missouri, Kansas, etc., Ry. Co.* v. *Elliott, supra,* which was rendered by this court in 1902, the Supreme Court of Missouri beginning with the case of *State ex rel.* v. *Broaddus,* 238 Mo. 189, decided in 1911, has held that under the Constitution of Missouri the Supreme Court has the power to review decisions of the Kansas City Court of Appeals, in any case. The decision in that case has been followed in *State ex rel.* v. *Broaddus,* 245 Mo. 123; *State ex rel.* v. *Ellison,* 256 Mo. 644; *State ex rel.* v. *Reynolds,* 257 Mo. 19; *State ex rel.* v. *Robertson,* 264 Mo. 661 and *State ex rel.* v. *Ellison,* 266 Mo. 604. The doctrine thus enunciated has become

firmly imbedded in the jurisprudence of the state and it follows that there can be no final judgment of the Kansas City Court of Appeals in any case, until there has been an application to the Supreme Court of Missouri for a writ of certiorari to review such decision and said application has been denied.

I.

The first error assigned is that the construction placed upon the attorney's lien law of Missouri by the Kansas City Court of Appeals, deprives plaintiff in error of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States in that it subjects plaintiff in error to a double liability by attaching to one and the same cause of action a multiple of attorney's liens.

This ground of error is clearly one for which a writ of certiorari must issue, under Sec. 237 of the Judicial Code, as amended by the Act of Congress of Sept. 6th, 1916. Such being the case it cannot be considered by this court, notwithstanding, other grounds of error may be properly assigned. *Dewey* v. *City of Des Moines*, 173 U. S. 193, *Keokuk and Hamilton Bridge Co.* v. *Illinois*, 175 U. S. 626.

But even if the assignment of error was properly made it has no foundation, in reason or authority. The right of action for a personal injury is a transitory action. *Atchison, Topeka & Santa Fe Ry.* v. *Sowers*, 213 U. S. 55, 67. The injured party can take his cause of

action to any state where the tort feasor may be found and bring suit. There is no distinction between transitory actions originating outside of the state, and those originating within the state. No reason for such a discrimination can be imagined. The right of a state to create by statute a lien in favor of an attorney upon a cause of action cognizable by the courts of the state is not disputed. The creation of the attorney's lien has no more to do with the cause of action on which it rests than a real estate mortgage has to do with the deed to the land on which it is given. The parties, the time of entering into the contract and the nature of the contract, are different. In the case at bar when Xedes came to Missouri from Kansas, he brought his right of action for a personal injury with him. When he entered into the contract in Missouri with defendant in error, for a suit to be brought in Missouri it was a Missouri contract, to be interpreted according to the laws of Missouri. The laws of Kansas had no application to the contract between Xedes and defendant in error for this contract was entered into in Missouri, and the cause of action was in the possession of Xedes in Missouri at the time. If a man residing in Kansas should have a horse born in that state and then should remove to Missouri taking the horse with him and while in Missouri should give a chattel mortgage on the horse to another resident of Missouri, in a suit by the mortgagee in the courts of Missouri to foreclose the chattel mortgage, would the laws of Kansas be involved because of the birthplace of the horse?

It is not claimed that the provisions of the attorney's lien law of Missouri violate the constitution or any statute of the United States.

Therefore, its construction is purely a matter for the courts of Missouri to decide.

Bush v. *Person*, 18 How. 82, 83.
Iroquois Transportation Co. v. *Delaney Forge & Iron Co.*, 205 U. S. 354.
Miller's Executors v. *Swann*, 150 U. S. 132.

Inasmuch as the Missouri courts in the case at bar were construing a contract entered into in Missouri according to the laws of Missouri, and relating to a subject matter which was within the territorial confines of Missouri at the time the contract was entered into, the claim of plaintiff in error that an extra territorial effect was given to the law is meaningless. Equally without foundation is the claim of plaintiff in error that a Federal question is raised because multiple liens may be created under the attorney's lien law of Missouri. There is no more reason why a plaintiff may not create successive attorney's liens on his cause of action than there is why the owner of real estate should not give successive mortgages on his land. The priority and extent of the successive liens is a matter for the courts to decide, when the plaintiff and the lien claimants are brought before the court.

The authorities cited by plaintiff in error under this head not only can be readily distinguished from the facts in the case at bar, but, so far as they are applicable, they sustain the position of defendant in error. In *Anderson* v. *Ry.*, 86 Kansas 179, cited by plaintiff in error

an injured party employed attorneys in Missouri to bring suit in that state against a railway company for personal injuries. Later he employed attorneys in Kansas to bring suit in Kansas upon the same cause of action. The Kansas attorneys notified the railway company of their employment. Afterwards, the railway company settled the suit with the Missouri attorneys without notifying the Kansas attorneys. It was held that the Kansas attorneys could recover the amount of their lien in a suit against the railway company. This case upholds the position of defendant in error on the following points:

1. The cause of action for personal injuries being transitory, the injured party can take it to any state and there impress it with an attorney's lien.

2. The attorney's lien is to be construed according to the laws of the state where the contract of employment is made regardless of where the cause of action originated.

3. The injured party can impress his cause of action with any number of liens.

4. The attorney has a right of action against the defendant for deforcing his lien, where defendant makes a settlement with the plaintiff without the knowledge or consent of the attorney.

Plummer v. *Great Northern R. Co.*, 60 Wash. 214, is also cited by plaintiff in error. In that case one Funk was injured by a railway in British Columbia. He employed an attorney in Washington to bring suit, and the attorney served notice of his lien on the railway com-

pany in Washington. The Washington attorney then employed an attorney in British Columbia to institute proceedings under the Workmen's Compensation Act of that province. In those proceedings an attorney's fee was collected, and part of it paid to the Washington attorney. The Washington attorney then brought suit in that state on his lien. The court held, he could not recover for two reasons: First. He was estopped because of receiving part of the fee in the proceedings in British Columbia. Second, under the attorney's lien law of Washington the attorney is not given a lien unless there is an action or proceeding pending in court. The attorney's lien law of Missouri is different. Sec. 965, R. S. of Missouri, under which the case at bar was brought, gives an attorney a lien before suit is brought upon service of a notice. This case is not an authority for any contention of the plaintiff in error.

Sherry v. *Navigation Company*, 72 Fed. Rep. 565, is cited by plaintiff in error. In that case suit was brought by plaintiff for a personal injury. Under the New York Statute, the attorney had a lien for his fee from the time of the commencement of the suit. The case was settled without the knowledge of plaintiff's attorney. The latter asked the court for leave to prosecute the action for his own benefit. The court denied the application, saying, "whatever rights the state statute may give the attorney, against his client, or his adversary he may prosecute in the state court." This is precisely what defendant in error is doing in the case at bar.

II.

The second ground of error alleged is that the decision of the Kansas City Court of Appeals made the attorney's lien law of Missouri paramount to the acts of congress conferring judicial authority upon the courts of the United States, inasmuch as the satisfaction of the judgment of the Federal Court was nullified by the enforcement of the liability of the plaintiff in error to the attorney.

No authority is cited by plaintiff in error for this position, and it has no support in reason. The cause of action arising in tort for personal injuries was extinguished by the payment and satisfaction of the judgment in favor of Xedes. The cause of action upon the contract of employment of defendant in error as attorney was not affected. The two causes of action are distinct in every particular. As was said by this court in *Miller's Executors* v. *Swann*, 150 U. S. 132:

> A state may prescribe the procedure in the Federal Courts as the rule of practice in its own tribunals; it may authorize the disposal of its own lands in accordance with the provisions for the sale of the public lands of the United States; and in such cases an examination may be necessary of the acts of Congress, the rule of the Federal Court, and the practice of the Land Department, and yet the questions for decision would not be of a Federal Character. The inquiry along Federal lines is only incidental to a determination of the local question of what the state has required and prescribed. The matter decided is one of state rule and practice.
>
> The facts by which that state rule and practice are determined may be of a federal origin.

Practically the same language was used by the United States Circuit Court of Appeals for the Eighth Circuit in *St. Paul M. & M. Ry. Co.* v. *St. Paul and N. P. R. Co.*, 68 Fed. 2, 13, where the court said:

> The case does not become of Federal cognizance because it may be found necessary, in construing a private contract or a local law from which the rights of the respective parties are derived to consult some federal statute with a view of ascertaining the meaning of the contract and the scope and effect of the local law. In such cases the cause of action or the defense, as the case may be, is not founded on a law of the United States in any such sense, as to bring the suit within the jurisdiction of the Federal Courts.

In the case at bar in order to enforce the state law giving an attorneys' lien the State Court would have to inquire into what was done, in the Federal Court. This inquiry did not involve the construction of any Federal Statute, but was purely one for the ascertainment of facts, so that the State Court might know whether the state law governing attorneys' liens was applicable to the facts thus found. The question involved is the construction of a state law and not its validity. Therefore, no federal question is presented.

Grand Gulf R. R. & Banking Company v. *Marshall*, 53 U. S. 165.

Commercial Bank v. *Buckingham*, 5 How. 317.

Sage v. *Louisiana Board of Liquidation*, 144 U. S. 647.

Robertson v. *Coulter*, 16 How. 106.

III.

The third ground of error is that the decision of the Kansas City Court of Appeals, gave the Missouri attorney's lien law extra territorial force and effect. Inasmuch, as a Missouri court, in a suit brought in Missouri, was construing a contract entered into in Missouri, between parties domiciled in Missouri, and relating to a subject matter in Missouri, it is difficult to comprehend the basis of this claim. As Xedes was born in Greece, plaintiff in error might with equal propriety claim that the laws of the kingdom of Greece apply to the contract and not the laws of Missouri.

Williams v. *Bradley*, 187 Ala. 158, is cited by plaintiff in error. A casual reading of the case shows that it arose before the attorneys' lien statute of that state went into effect, and that the lien considered in the case, is the common law lien, given an attorney. Under the Missouri statute the attorney has an independent right of action for the deforcement of his lien, while at common law he had none. The case has no application to the facts in the case at bar.

On page 31 of the brief of plaintiff in error, occurs this language:

> Plaintiff in error contends, that the payment of the amount of the judgment rendered in the United States District Court to the clerk of that court in the case of *Xedes* v. *Union Pacific Railroad Company*, constituted a complete satisfaction of all liability of the Union Pacific Railroad Company, to Xedes, or his attorneys. The money was *in custodia legis*, and before it could be withdrawn from the court's custody and control, an order to that effect had to be made by the judge of that court.

No order of the judge appears in the transcript of record and the record shows, that the money was paid by plaintiff in error to the attorneys for Xedes (Rec. p. 19). It thus appears, that the plaintiff in error collusively stipulated with the attorneys for Xedes that a judgment be entered and then paid the money directly to said attorneys. No opportunity was given defendant in error, to make any claim on the fund even if he had known of the transaction which the evidence shows he did not.

It was not necessary for the plaintiff in error to file a bill of interpleader. Under the Missouri practice a notice served upon the defendant in error notifying him that at a certain time and place, plaintiff in error would pay the judgment to the clerk, would have been sufficient to release plaintiff in error from all liability to defendant in error. *Compher* v. *Missouri & Kansas Telephone Co.*, 137 Mo. App. 89. But plaintiff in error chose to ignore the rights of defendant in error, by omitting to take ordinary precautions to avoid liability. By failing to give notice to defendant in error when and where the money was to be paid, plaintiff in error made itself liable for the deforcement of the lien of defendant in error under the decisions of the courts of Missouri. There is no federal question presented by this record, and the writ of error should be dismissed or the judgment of the Kansas City Court of Appeals should be affirmed.

Respectfully submitted,

EDWIN A. KRAUTHOFF,
Attorney for Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

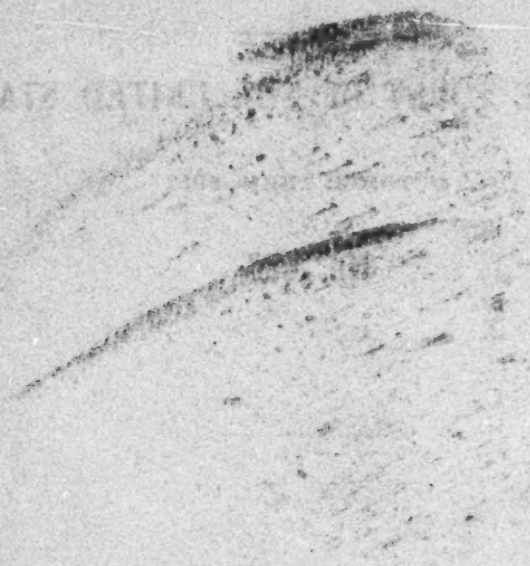
No. 623

UNION PACIFIC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

L. A. LAUGHLIN.

REPLY BRIEF BY DEFENDANT IN ERROR ON MOTION TO DISMISS OR AFFIRM.



In the brief of plaintiff in error, on the pending motion to dismiss or affirm, is found this statement (p. 10.):

"And plaintiff in error claims that this raised a specific Federal question under section 709, R. S. of the United States, which provides for a review of the judgment of the highest court of a State by the United States Supreme Court, where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of or commission held, or authority exercised under the United States, and the decision is against the right, title, privilege and immunity specifically set up and claimed by either party under such Constitution, treaty, statute, commission or authority."

Section 237 of the Judicial Code, effective January 1, 1912, provides:

"A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had,

"Where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or

"Where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; or

"Where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity, especially set up or claimed by either party, under such Constitution, treaty, statute, commission or authority,

may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error. * * *"

By section 2 the act of September 6, 1916, taking effect October 6, 1916 (39 Stat. at L., pp. 726, 727), the italicized portion of section 237 quoted *supra* was eliminated. The pending writ of error was allowed July 20, 1917. (Rec., pp. 47-49.)

The errors assigned (Rec., pp. 47-49) it is respectfully submitted are all predicated of the eliminated portion of section 237.

Section 237 of the Judicial Code is identical with R. S., §709. For an exhaustive discussion of the jurisdiction of this Court, 1 Encl. U. S. Sup. Ct. Rep., pp. 546 *et seq.* See especially pp. 550, 551, 552, 558, 568, 572, 573, 574.

See the seventh, ninth, tenth, and thirteenth grounds assigned in the motion for new trial filed in the State Court. (Rec., 27-30.)

EDWIN A. KRAUTHOFF,
Attorney for Defendant in Error.

No. 623.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

UNION PACIFIC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

VS.

L. A. LAUGHLIN, DEFENDANT IN ERROR.

ADDITIONAL BRIEF FOR DEFENDANT IN ERROR.

I.

The writ of error should be dismissed. It is not issued to "the highest court of the state in which a decision in the suit could be had." (Sec. 237, Judicial Code).

The Constitution of Missouri, adopted in 1875, created the St. Louis Court of Appeals. Rev. Stat. Mo. 1909, p. 88. An appeal was granted from that court to the Supreme Court of Missouri "* * * in cases where the

validity of a treaty or statute of or authority exercised under the United States is drawn in question."

Sec. 12, Art. 6, Constitution of Missouri, 1 R. S. Mo. 1909, p. 88.

In 1884, Kansas City Court of Appeals was created. 1 R. S. Mo. 1909, p. 100.

Section 5 (p. 101), gave the Supreme Court direct appellate jurisdiction over the class of cases theretofore appealable from a court of appeals, that is to say, cases theretofore appealable from a court of appeals to the Supreme Court were thereafter directly appealable from a court of first instance to the Supreme Court. *Steffen* v. *City of St. Louis*, 135 Mo. 44; *Rourke* v. *Holmes St. Ry. Co.*, 257 Mo. 555, 561.

Section 3 (p. 100), gave the general assembly power "to provide for the transfer of cases from a court of appeals to the Supreme Court." Under R. S. Mo. 1909, Sec. 3938, causes not within the jurisdiction of a court of appeals may be transferred to the Supreme Court.

First Natl. Bank v. *Am. Natl. Bank*, 173 Mo. 153, 158.

Central Natl. Bank v. *Haseltine*, 73 Mo. App. 60, 155 Mo. 58, 183 U. S. 132.

Miller Grain & Elevator Co. v. *Union Pacific Ry. Co.*, 61 Mo. App. 295.

Reed v. *Western Union Tel. Co.*, 56 Mo. App. 168, 135 Mo. 661.

Town of Canton v. *McDaniel*, 188 Mo. 207.

Schuster v. *Weiss*, 39 Mo. App. 633; 114 Mo. 158.

City of Eldorado Springs v. *Highfill*, 168 Mo. App. 557.

In this case, a motion to transfer to the Supreme Court of Missouri was filed and denied in Kansas City Court of Appeals. But no application of any sort was made to nor any action taken by Supreme Court of Missouri in the case.

(Syllabus 4) Prohibition will lie from the Supreme Court of Missouri to a court of appeals to prevent it from acting in a case of which it has no jurisdiction (in this case, a federal question); and the writ may also require that the case be transferred to the Supreme Court.

State ex rel. v. *St. Louis Court of Appeals*, 97 Mo. 276.

To like effect:

State ex rel. v. *Kansas City Court of Appeals*, 105 Mo. 299.
State ex rel. v. *Rombauer*, 130 Mo. 288.
State ex rel. v. *Smith*, 131 Mo. 176.
State ex rel. v. *Smith*, 141 Mo. 1.
State ex rel. v. *Smith*, 150 Mo. 75.
State ex rel. v. *Smith*, 152 Mo. 444.
State ex rel. v. *Smith*, 177 Mo. 69.
State ex rel. v. *Nortoni*, 201 Mo. 1.

The Supreme Court of Missouri has appellate jurisdiction in cases "where the validity of a treaty or statute of or authority exercised under the United States is drawn in question."

Beekman Lumber Co. v. *Acme Harvester Co.*, 215 Mo. 221, 230.
Municipal Securities Corporation v. *Kansas City*, 265 Mo. 252, 263.
Mitchell v. *Joplin National Bank*, 184 Mo. App. 483.

(Syllabus) A judgment of an intermediate appellate State Court is not a final judgment of the state court of last resort * * * if the highest court of the state has a discretionary power to review which has not been invoked and refused.

Stratton v. *Stratton*, 239 U. S. 55.

To the same effect:

Mullen v. *Western Union Beef Co.*, 173 U. S. 116.
Great Western Tel. Co. v. *Burnham*, 162 U. S. 339, 341.
McKnight v. *James*, 155 U. S. 685, 687.

There are cases hereinafter cited in which the highest court of a state refused to interfere with the judgment complained of; hence the writ was held properly issued to the court rendering the judgment.

Kanawha Railway v. *Kerse*, 239 U. S. 576.
W. U. Tel. Co. v. *Crovo*, 220 U. S. 364.
W. U. Tel. Co. v. *Hughes*, 203 U. S. 505.
Kentucky v. *Powers*, 201 U. S. 1, 37.
Sullivan v. *Texas*, 207 U. S. 416.
Murphy v. *California*, 225 U. S. 623.
St. L., S. F. Ry. & Texas Ry. Co., v. *Sealy*, 229 U. S. 156.
Stanley v. *Schwalby*, 162 U. S. 255, 266.
Bacon v. *Texas*, 163 U. S. 207, 215.
Clark v. *Pennsylvania*, 128 U. S. 395.

In *M. K. & T. Co.* v. *Elliott*, 184 U. S. 530, an application had been made to the Supreme Court of Missouri for a writ prohibiting Kansas City Court of Appeals from taking jurisdiction of the case and this application had been denied, 154 Mo. 300.

See also *Gregory* v. *McVeigh*, 23 Wall. 294, 306.

But in the case at bar no application of any kind was made to the Supreme Court of Missouri.

The fact that the Supreme Court of Missouri may have remanded cases to courts of appeals involving questions of a Federal or constitutional nature:

M. K. & T. Ry. Co. v. *Smith*, 154 Mo. 30[illegible].
Live Stock Com. Co. v. *C. M. & St. P. Ry. Co.*, 157 Mo. 518.

State ex rel. v. *Smith*, 176 Mo. 44; is immaterial—This court will not anticipate what the action of that court might have been.

Stratton v. *Stratton, supra.*

II.

Plaintiff in error claims this case involves "the validity of an authority exercised under the United States" within the first class of cases mentioned in Section 237 of the Judicial Code—Defendant in error claims if any federal question arises at all, it is within the third class of cases mentioned in the section cited, which since September 8, 1916, are reviewable only on certiorari. Plaintiff in error claims immunity from liability because it satisfied a judgment of a court of the United States—This, as we contend is an instance of a "title, right, privilege or immunity * * * claimed under * * * any * * * authority exercised under the United States."

In 1 U. S. Stat. at large, p. 73, it appears that as enacted in 1789, the third clause of the 25th section of the Judiciary Act, afterward R. S. Sec. 709, same as Judicial Code, see 237 (prior to September 8, 1916), read:

> "Or where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of such constitution, treaty, statute or commission."

By the Act of February 5, 1867, 14 U. S. Stat. at large, p. 386, the third clause is made to read:

> "Or where any title, right, privilege or immunity is claimed under the constitution or any treaty or statute of or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority."

In *Buck* v. *Colbath*, (1865) 3 Wall, 333, a United States marshal was sued in a state court by a stranger to a writ for trespass in taking goods not the property of defendant. The marshal sued out a writ of error from the Supreme Court to reverse the judgment of a state court against him. * * * Held, jurisdiction existed. "The defendant claimed *the protection of 'an authority* exercised under the United States.'" (3 Wall. 340).

To the same effect, *Clements* v. *Berry*, 11 How. 398, 408.

In *McGuire* v. *Commonwealth* (1865) 3 Wall. 387, defendant claimed under a federal license. "The decision was against an authority set up under an Act of Congress" (3 Wall. 395).

Millingar v. *Hartupee*, 6 Wall. 258, arose under the 25th section of the Judiciary Act, as enacted in 1789. "The authority intended by the Act is one having a real existence, derived from competent governmental power. * * * If a different construction had been intended, congress would doubtless have used fitting words. The Act would have given jurisdiction in cases of decisions *against claims of authority* under the United States" (6 Wall. 261).

Baltimore & Potomac R. R. Co. v. *Hopkins*, 130 U. S. 210, is a review of the legislation and course of judicial opinion with respect to the jurisdiction of the Supreme Court to entertain a writ of error to a state court. It is pointed out, the word authority, as found in the first clause of what is now Section 237 of the Judicial Code, "stands upon the same footing with 'treaty' or 'statute'" (130 U. S. 224).

> "The validity of a statute * * * refers to the power of congress to pass the particular statute at all, and not to mere judicial construction as contradistinguished from a denial of the legislative power" (130 U. S. 226).
>
> "* * * the validity of the authority must have been drawn in question directly and not incidently * * * nor is the validity of an authority (drawn in question) every time an Act done by such authority is disputed * * * the validity of an

authority is drawn in question when the existence, or constitutionality or legality of such statute or authority is denied, and the denial forms the subject of direct inquiry" (130 U. S. 226).

United States v. *Lynch*, 137 U. S. 280, 285.
Cook County v. *Calumet etc. Canal Co.*, 138 U. S. 635, 653.
Ferry v. *King County*, 141 U. S. 668, 673.

"The distinction is palpable between a denial of the authority and a denial of the right, title, privilege or immunity claimed under it."

Abbott v. *Tacoma Bank*, 175 U. S. 409, 413.

Thus an authority exercised under the United States is denied when a state court renders judgment in ejectment against an officer of the government for land occupied by him in his official capacity.

Stanley v. *Schwalby*, 147 U. S. 508; 162 U. S. 255.

"But a party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States may be fairly held within the meaning of Section 709, *to assert a right and immunity* under such statutes."

Nutt v. *Knut*, 200 U. S. 17, 19.
St. L., etc., Ry. Co. v. *Taylor*, 210 U. S. 281, 293.
Strauss v. *Am. Publisher's Assn.*, 231 U. S. 222, 233, 234.

"Where a state court refuses to give effect to the judgment of a court of the United States, rendered upon the point in dispute, and with jurisdiction of the case and the parties, a question is undoubtedly raised which *under the Act of* 1867 may be brought to this court for revision. The case

would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right set up."

Dupasseur v. *Rochereau*, 21 Wall. 130, 134.
Embry v. *Palmer*, 107 U. S. 3, 9.
Crescent City Live Stock Co. v. *Butchers' Union Slaughter House Co.*, 120 U. S. 141, 146.
Pittsburgh etc. Ry. Co. v. *Long Island Loan & Trust Co.*, 172 U. S. 493, 507.
Acme Harv. Co. v. *Beekman Lumber Co.*, 222 U. S. 300, 305.
Deposit Bank v. *Frankfort*, 191 U. S. 499, 515.
Cumberland Glass Co. v. *DeWitt*, 237 U. S. 447, 449.

So also when full faith and credit is denied the judgment of a sister state.

Hancock National Bank v. *Farnum*, 176 U. S. 640.

Where the United States claimed certain vessels to be free and clear of liens, the jurisdiction of the Supreme Court was upheld under the third class of cases provided for in Section 709.

United States v. *Ansonia Brass & Copper Co.*, 218 U. S. 452, 462.

Where a surety on a bond given in a Federal Court was sued in a State Court, "the defense specially set up that no liability on the bond could arise until the court of the United States in which the controversy was pending had finally determined that the injunction should not have been granted, was the assertion *of immunity from*

liability defending on an authority exercised under the United States."

Tullock v. *Mulvane,* 184 U. S. 497, 505.

Where an assignee in bankruptcy claimed a fund, and his claim was denied in a state court, "the decision of the state court was against a right or title claimed under a statute of the United States."

Williams v. *Heard,* 140 U. S. 529, 536.

Where a federal receiver claimed that he could not be sued without leave of the court appointing him, the Supreme Court took jurisdiction of a writ of error to a State Court denying such claim, under the third clause of what is now Section 237 of the Judicial Code.

McNulta v. *Lockridge,* 141 U. S. 327, 331.

The right of a corporation organized under an Act of congress to the use of its corporate name is "a right or privilege claimed under an authority exercised under the United States."

Creswill v. *Knights of Pythias,* 225 U. S. 246, 258.

III.

A.

Let us assume that Xedes was injured in Missouri, made a contract in Missouri with Laughlin entitling Laughlin to a lien on Xedes' cause of action, merged in Xedes' judgment, recovered in a state court, judgment paid by defendant to Xedes without paying the lien of

Laughlin, in that case defendant would be clearly liable.

The Missouri Statute giving attorneys a lien on the cause of action of the client "is the creation of a new right."

Young v. *Renshaw*, 102 Mo. App. 173, 184.

> "* * * the lien itself in the first instance is upon the *cause of action* from the commencement thereof. Being conferred upon the cause of action, it is not lost by a settlement of such cause of action. It attaches to the proceeds of such action."
>
> *Conkling* v. *Austin*, 111 Mo. App. 292, 300.

Under the second section of the Missouri Statute, "the attorneys lien *and his right to enforcement* is made to defend on a contract with his client * * *."

Yonge v. *St. Louis Transit Co.*, 109 Mo. App. 235, 245.

And an attorney may sue directly at law, the defendant who has deprived him of his lien by settling direct with his client, even though the client be solvent. *Ib.*

Curtis v. *Met. St. Ry. Co.*, 118 Mo. App. 341.
....., 125 Mo. App. 369.
Boyle v. *Met. St. Ry. Co.*, 134 Mo. App. 71.
Boyd v. *Mercantile Co.*, 135 Mo. App. 115.
Carter v. *Railroad Co.*, 136 Mo. App. 719.
United Rys. Co. v. *O'Connor*, 153 Mo. App. 128, 139.
Wolf v. *United Rys. Co.*, 155 Mo. App. 125, 129.
O'Connor v. *St. Louis Transit Co.*, 198 Mo. 622.

Taylor v. *St. Louis Transit Co.*, 198 Mo. 715.
Taylor v. *St. Louis, etc., Ry. Co.*, 207 Mo. 495.
Whitecotton v. *St. Louis, etc., Ry. Co.*, 250 Mo. 624.
Standidge v. *Chicago Rys. Co.*, 254 Ill. 524, 40 L. R. A. N. S. 529.

"In paying all the settlement money over to plaintiff, defendant did not and could not escape liability on account of the lien."

Hurr v. *Met. St. Ry. Co.*, 141 Mo. App. 217, 222.
Curtis v. *Met. St. Ry. Co.*, 118 Mo. App. 341, 350.

"The defendant having knowledge of the lien may not say that it disregarded it and parted with the entire fund. It was bound to retain and the law conclusively assumes it has retained sufficient to pay the sum which plaintiff was entitled to receive."

Sargent v. *McLeod*, 209 N. Y. 360, 365.

If a plaintiff retains two attorneys in succession, and creates two liens, defendant is liable for both, provided they do not exceed the amount of the settlement

Bishop v. *United Rys. Co.*, 165 Mo. App. 226, 229.
United Rys. v. *O'Connor*, 153 Mo. App. 128, 139.

"* * * if a defendant knowingly pays a judgment without taking care of such assignment or lien, it will be liable again to the extent of such lien."

Lawson v. *Telephone Co.*, 178 Mo. App. 124, 132.

B.

But it is said, Xedes was injured in Kansas. But what of that? His cause of action being transitory, may be enforced in Missouri, defendant being suable there.

Atchison, etc., Ry. Co., 213 U. S. 55, 67.
Penna Fire Ins. Co. v. *Gold Issue Mining Co.*, 243 U. S. 93, affirming 267 Mo. 94.

In *Piatt* v. *Swift & Co.*, 188 Mo. App. 584, it was inferentially held, an attorneys' lien could be created in Missouri on a cause of action arising in Kansas.

C.

Next, it is urged Union Pacific R. R. Co. being sued in a state court by Xedes (see original Brief of Plaintiff in Error, p. 3), could remove that action to the Federal Court and thus deprive Laughlin of a lien on the cause of action in favor of Xedes.

But this contention is denied by high authority.

> "The other question presented upon this appeal is whether the court lost jurisdiction to determine this question in consequence of the removal of the action brought to enforce the cause of action upon which the plaintiff had a lien to the United States Circuit Court before the settlement. It is quite clear, however, that such removal did not affect the plaintiff's lien upon the cause of action sought to be enforced, as the lien existed by operation of law. The right of the lien did not defend in any way upon the decision or judgment of the United States Circuit Court. The lien attached upon the commencement of the action in the Supreme Court of the State of New York, and upon the settlement attached to the fund in the hands of the defendant,

which determined the cause of action, and the relation between the plaintiff and defendant was not different from that in any case in which the defendant had in its hands a fund to which a lien had attached. The plaintiff, therefore, had the right to apply to the Supreme Court of the State of New York, a court of competent jurisdiction, to enforce that lien, if it could get jurisdiction over the defendant railroad company who had in its hands the fund to which the lien attached."

Oishei v. *Penna. R. Co.*, 102 N. Y. Supplement, 368, 372; affirmed 191 N. Y. 544.

In the Oishei case, one Bonaddio was injured in New Jersey. He retained an attorney in New York, and a suit was brought in New York, removed to a federal court by defendant. The suit was settled by paying the plaintiff $1500. Oishei had a lien contract, and this was enforced by an action in the state court.

To the same effect, 72 Fed. 565, 566.

A lien of an attorney created by state law was enforced in a federal court.

Central R. R. v. *Pettus*, 113 U. S. 116.

An attorneys' lien created by contract was likewise enforced.

Ingersoll v. *Coram*, 211 U. S. 335.

(Syllabus) Whether an attorney has a lien for services rendered on money recovered as a result of his efforts is a matter of local law not to be disposed of on independent views entertained by the federal courts.

Cain v. *Hockensmith Wheel & Car Co.*, 157 Fed. 992.

An attorneys' lien on a judgment given by the common law, enforced by a state statute, was recognized in a federal court.

Brown v. *Morgan*, 163 Fed. 395.
See, also, *Patrick* v. *Leach*, 17 Fed. 476.

(Syllabus) The lien of an attorney is upon the money due his client for services actually rendered, and if duly employed and proper notice is given he has a lien, even though subsequently discharged and a recovery is secured by other attorneys in another action and in a different court. (In this case, a federal court).

Gibson v. *C., M. & St. P. Ry. Co.*, 122 Iowa, 565.

(Syllabus) Code Civ. Proc. N. Y., Sec. 66, creating an attorney's lien on the client's cause of action, etc., and providing for the enforcement thereof on petition, was not a mere practice act, but created a right and provided a remedy for its enforcement, and was therefore controlling on the federal courts sitting in such state.

In Re Baxter & Co., 154 Fed. 22. (See p. 25 for cases cited).
See, also, *Herman* v. *Met. St. Ry. Co.*, 121 Fed. 184.
Union Pac. R. Co. v. *Laughlin*, 245 Fed. 544.

"As the original retainer was made in Texas, we are inclined to the opinion that the rights of the parties are to be regulated by the laws of that state."

In re Paschal, 10 Wall. 483, 495, 496.

The payment by Union Pacific R. R. Co. of the judgment Xedes recovered in the federal court is no defense to this action. Laughlin was not a party to that action. The railroad company took no steps to make him a party, nor give him any opportunity to enforce his rights in that action.

> "The attorney, however, even if he has a lien on the judgment, according to the course of proceedings in the court where it was recovered * * * is not a party to the suit, nor does he stand in the place of the party in interest."
>
> *Platt* v. *Jerome*, 19 How. 384, 385.

> "* * * no persons are bound by a judgment or decree except those who are parties to it, and have had an opportunity of presenting their rights."
>
> *Dupasseur* v. *Rochereau*, 21 Wall. 133, 135, 136.

> "* * * after notice to the debtor of a *bona fide* transfer of the judgment, the rights of the assignee will be protected from any and all acts of the original parties." 23 Cyc. 1425.
>
> "An entry of satisfaction of a judgment may be vacated * * * when it operates to the disadvantage of a third person having a lien on the judgment." 23 Cyc. 1500.

In *Nicola* v. *American Car & Foundry Co.*, 185 Mo. App. 285, defendant paid a judgment in full on an execution in the hands of a sheriff. The sheriff paid the money to the plaintiff. Then the administrator of a law firm intervened and on motion, the satisfaction of the judgment was set aside and a new execution ordered issued *pro tanto* to satisfy the attorney's lien. Held, not-

ADDENDA

"There is no Federal case establishing a lien at common law in behalf of an attorney beyond that given by the local law."

Gregory v. Pike, 67 Fed., 837, 843.

5 Fed. Stat. Ann. (2 ed), p. 1199 and

3 United States Comp. Stat., 1916, West Pub. Co., p. 2992,

cite cases recognizing liens created by State laws and the manner of their enforcement in Federal Courts. See also pp. 3018, 3049, 3053.

Also, Meighan v. American Grass Twine Co., 154 Fed., 346, 83 C. C. A., 124.

Williams v. Bradley, 187 Ala., 158, cited by plaintiff in error, is not authority against a recovery under the Missouri statute. The lien recognized in Alabama depends on principles of general law (38 Ala., 527, 531; 74 Ala., 422; 157 Ala., 161) and is a lien on a judgment, not on a cause of action (cas. cit.). "The subject matter of the lien, viz., the judgment, becomes extinct, if the judgment is paid in full." (157 Ala., 161.) The Missouri statute creates a lien on the client's cause of action and gives the attorney a cause of action against one deforcing the attorney of his lien (Rec., p. 40.)

The Roanoke, 189 U. S., 185, cited by plaintiff in error, simply holds "that where Congress has dealt with a subject

within its exclusive power, or where such exclusive power is given to the Federal courts, as in cases of admiralty and marine jurisdiction, it is not competent for States to invade that domain of legislation, and enact laws which in any way trench upon the power of the Federal government." (189 U. S., 197.)

The Chusan, Fed. Cas., 2717, is to the same effect.

But Xedes' cause of action, on which, under the statutes of Missouri, Laughlin had a lien was not within the power of Congress to affect, nor within the exclusive jurisdiction of a Federal court. See also, 244 U. S., 238.

"That the clerk was authorized, *with the sanction or by order of court,* to receive money paid into court in a pending cause, is clearly implied from the legislation of Congress."

Howard v. United States, 184 U. S., 676, 683.

Wayman v. Southard, 10 Wheat, 1, cited by plaintiff in error, was decided in 1825. The conformity act was passed by Congress in 1872. (R. S., sec. 914, 3 U. S. Comp. Stat., 1916, West Pub. Co., p. 2912, 6 Fed. Stat. Ann. [2d. Ed.], p. 21.)

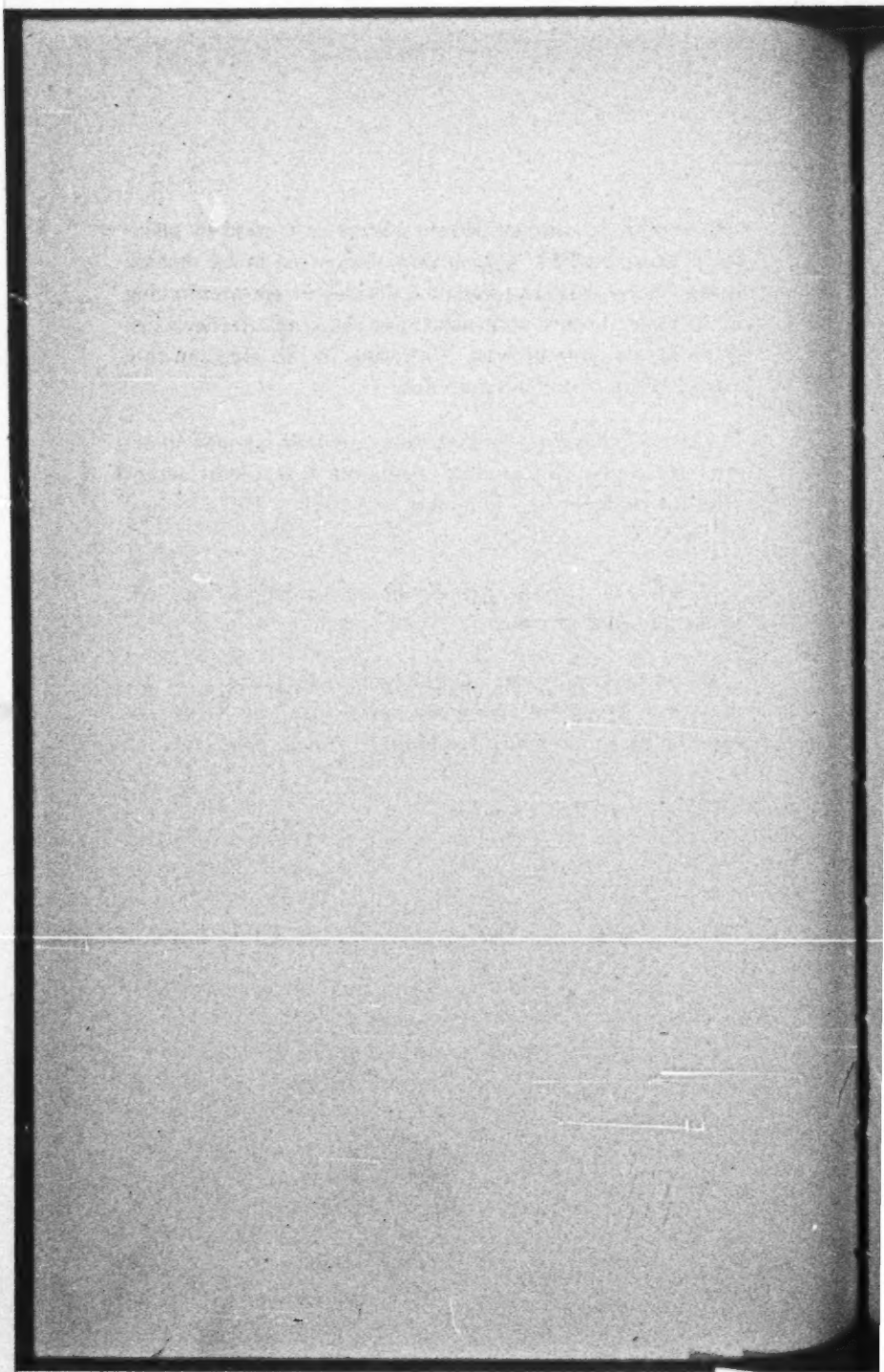
Money paid into a Federal court "and placed *by order of the court* in its registry" may not be attached— so long "as the same (the money) remains under its (the court's) control" no other court can touch it. (114 Fed., 603, cited by plaintiff in error.) In the case at bar no order of court was made, and the clerk paid out the money March 3, 1915 (Rec., p. 19), and there is no claim Laughlin sued before that date. The record does not show when he did sue.

Lacombe, J., who decided the Sherry case, cited by plaintiff in error, 72 Fed., 565, in 1895, concurred in the opinion in the Baxter case, 154 Fed., 22, decided in 1907, enforcing in the Federal court, as a substantive right, an attorney's lien given by a statute of New York; also in the Meighan case (154 Fed., 346) to the same effect.

Blake v. Hawkins, 19 Fed., 204, cited by plaintiff in error, arose in North Carolina. A statute in that state authorizes the payment of a judgment to a clerk. 1 Pell's Revisal of 1908, N. C., sec. 577.

In re Finks, 41 Fed., 383, the money was paid to the clerk under an order of court.

But in the case at bar, Laughlin was not a party to the action thru which the defendant below paid to Xedes the cause of action on which Laughlin by statute had a lien.



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withstanding the payment in full to the sheriff, the administrator was entitled to recover of defendant the attorney's fees. (185 Mo. App. 289 *et seq.*, and cases cited.)

The current of authorities is to the effect that the clerk has no power to receive payment of a judgment.

Hunt on Tender, Sec. 483, Note 23 Cyc. 1464.
7 Cyc. 224.
11 Dec. Digest, p. 2509, Judgment, see 874 (2).

"As a general rule payment of a judgment must be made to the plaintiff of record or to his attorney or duly authorized agent, unless the judgment * * * has been assigned to a third person, in which case the debtor, after notice of the assignment, must pay to the assignee." 23 Cyc. 1463, 1464.

EDWIN A. KRAUTHOFF,
For Defendant in Error.

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Table of Cases Cited:

No. 623.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

UNION PACIFIC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

VS.

L. A. LAUGHLIN, DEFENDANT IN ERROR.

IN ERROR TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

MOTIONS OF DEFENDANT IN ERROR TO DISMISS AND TO AFFIRM AND TO TRANSFER TO THE SUMMARY DOCKET.

Now comes L. A. Laughlin, the defendant in error, by Edwin A. Krauthoff, his counsel, and moves this court to dismiss and quash the paper purporting to be a writ of error herein, for want of jurisdiction and because the paper purporting to be a writ of error is informal, irregular and insufficient on the grounds stated in the annexed argument and upon other grounds; and the said defendant in error also moves this court to affirm the judgments of the Kansas City Court of Appeals of the State of Missouri and of the Circuit Court of Jackson

County, Missouri, upon the ground that it is manifest that the paper purporting to be a writ of error herein was taken for delay only, and that the questions on which it is claimed that the jurisdiction depends are so frivolous as not to need further argument; and the said defendant in error further moves this court to transfer this cause to the summary docket for the reason that the case is of such a character as not to justify extended argument.

EDWIN A. KRAUTHOFF,
Attorney and Counsel for Defendant in Error.

Notice.

Sirs:

Please take notice that on all the papers and proceedings herein, I shall submit to the Supreme Court of the United States, at a stated term thereof, on Monday, November 26, 1917, at the capitol in the City of Washington in the District of Columbia, at the opening of the court on that day, or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies; and that I shall submit with said motions and in support of the same the arguments annexed to the following statement of facts.

Washington, D. C., November 3, 1917.

Yours, &c.,

EDWIN A. KRAUTHOFF,
Attorney and of Counsel for Defendant in Error, 411 Riggs Building, Washington, D. C.

To N. H. LOOMIS,
I. N. WATSON and
R. W. BLAIR,
Attorneys for Plaintiff in Error.

STATEMENT.

This is an action to establish an attorney's lien given by the Statutes of Missouri. A Greek laborer named Christ Xedes was injured while in the employ of the Union Pacific Railroad Company, through its negligence at Onaga, Kansas, on October 11, 1913. He went to a hospital in Kansas City, Missouri, for treatment. Defendant in error is and was a duly licensed practicing attorney at law residing in Kansas City, Missouri. Xedes on November 12, 1913, while in the hospital through an interpreter, employed defendant in error as his attorney to prosecute his claim for damages against the railroad company for his injuries (Rec. 12). The contract of employment provided for a contingent fee of fifty per cent of the amount recovered (Rec. 14). Notice of the employment of the defendant in error and the terms of the contract of employment were duly given to the railroad company by the defendant in error, as required by the state statute, on November 17, 1913 (Rec. 14). Bringing of the suit was delayed at the request of Xedes until he could get out of the hospital (Rec. 12). Afterwards, when Xedes was released from the hospital, he employed a firm of attorneys named Davis & Holmes to bring suit for his injuries (Rec. 18). Davis & Holmes brought suit in the Circuit of Jackson County, Missouri, for Xedes against the railroad company. The suit was removed from the state court to the United States Court

for the Western District of Missouri (Rec. 21). There, on January 25, 1915, a judgment was entered by stipulation in favor of the plaintiff Xedes and against the railroad company, for $550.00 (Rec. 19). The railroad company paid the amount of the judgment and costs to the Clerk of the United States Court for the Western District of Missouri and the clerk paid the amount of the judgment to Davis & Holmes, as attorneys for Xedes, on March 3, 1915, and the judgment was satisfied of record (Rec. 19).

Defendant in error was not aware of these proceedings until sometime after the judgment had been entered, and satisfied (Rec. 17). On November 30, 1915, defendant in error brought an independent action against the Union Pacific Railroad Company for deforcing his attorney's lien by filing a statement before S. R. Layton, a Justice of the Peace of Jackson County, Missouri (Rec. 6). At the trial before the justice, judgment was rendered in favor of the plaintiff (Rec. 6). An appeal was taken from the judgment of the Justice of the Peace by the railroad company to the Circuit Court of Jackson County, Missouri, where, on a trial anew, judgment was rendered in favor of the defendant in error and against the railroad company for $275 (Rec. 3). From this judgment the railroad company appealed to the Kansas City Court of Appeals, where, upon a hearing, the judgment was affirmed (Rec. 39). From this affirmance the railroad company brings the case to this court by writ of error (Rec. 1).

ATTORNEY'S LIEN STATUTE OF MISSOURI.

Revised Statutes of 1909.

Sec. 964. The compensation of an attorney or counsellor for his services is governed by agreement, express or implied, which is not restrained by law. From the commencement of an action or the services of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim, which attaches to a verdict, report, decision or judgment in his client's favor, and the proceeds thereof in whosesoever hands they may come; and cannot be affected by any settlement between the parties before or after judgment (Laws 1901, p. 46).

Sec. 965. In all suits in equity and in all actions or proposed actions at law, whether arising *ex contractu* or *ex delicto*, it shall be lawful for an attorney at law either before suit or action is brought, or after suit or action is brought, to contract with his client for legal services rendered or to be rendered him for a certain portion or percentage of the proceeds of any settlement of his client's claim or cause of action, either before the institution or suit or action, or at any stage after the institution of suit or action, and upon notice in writing by the attorney who has made such agreement with his client, served upon the defendant or defendants, or proposed defendant or defendants, that he has such an agreement with his client, stating therein the interest he has in such claim or cause of action, then said agreement shall operate from the date of the service of said notice as a lien upon the claim or cause of action, and upon the proceeds of any settlement thereof for such attorney's portion or percentage thereof, which the client may have against the defendant or defendants, or proposed defendant or defendants, and cannot be affected by any settlement

between the parties either before suit or action is brought, or before or after judgment therein, and any defendant or defendants, or proposed defendant or defendants, who shall, after notice served as herein provided, in any manner, settle any claim, suit, cause of action, or action at law with such attorney's client, before or after litigation, instituted thereon, without first procuring the written consent of such attorney, shall be liable to such attorney for such attorney's lien as aforesaid upon the proceeds of such settlement, as per the contract existing as hereinabove provided between such attorney and his client (Laws 1901, p. 46).

UNITED STATES COMPILED STATUTES OF 1913.

Sec. 1605. Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshall under process of execution issued thereon, in all cases where, by the law of the state in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such state; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such state.

Sec. 1606. Judgments and decrees rendered in a (circuit or) district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state: provided, That whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana before

a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state (25 Stat. 357).

Sec. 1607. The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public (25 Stat. 357).

Sec. 1608. Judgments and decrees rendered in a (circuit or) district court, within any state, shall cease to be liens on real estate or chattels real, in the same manner and at like periods as judgments and decrees of the courts of such state cease, by law, to be liens thereon.

Sec. 1644. All moneys paid into any court of the United States, or received by the officers thereof, in any cause, pending or adjudicated in such court, shall be forthwith deposited with the treasurer an assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court: Provided, That nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

Sec. 1645. No money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said court, respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk; and every such order shall state the cause in or on account of which it is drawn.

In every case in which the right to withdraw money so deposited has been adjudicated or is not

in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, it shall be the duty of the judge or judges of said court, or its successor, to cause such money to be deposited in the Treasury of the United States, in the name and to the credit of the United States: Provided, that any person or persons or any corporation or company entitled to any such money may, on petition to the court from which the money was received, or its successor, and upon notice to the United States attorney and full proof of right thereto, obtain an order of court directing the payment of such money to the claimant, and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders, and this act is applicable to all money deposited in the Treasury of the United States in accordance with section nine hundred and ninety-six, Revised Statutes of the United States, as amended February nineteenth, eighteen hundred and ninety-seven (17 Stat. 1, 29 Stat. 578, 36 Stat. 1083).

ARGUMENT.

The motion for a new trial filed in the Circuit Court of Jackson County, Missouri (Rec. 28) and the assignment of errors in the Kansas City Court of Appeals (Rec. 35) refer to the sections of the United States Statutes above quoted as the basis of the claim of plaintiff in error. It is evident that the force and effect to be given to these sections of the United States statutes are not involved in the case at bar. As between the plaintiff, Xedes, in the case transferred to and determined by the United States Court for the Western District of Missouri and the defendant in that case, Union Pacific Railroad Company, these statutes were complied with and were given full force and effect.

But in the case at bar, the parties are different and the issue involved is different. The question in the case at bar is the construction to be given the attorney's lien statute of the State of Missouri. The validity of the state statute is not assailed, but the issue involved is, what force and effect shall be given to the statute? This court has repeatedly held that the construction of a state statute does not raise a Federal question, within the meaning of Sec. 237 of the Judiciary Act.

We quote from the *syllabus in Iroquois Transportation Co.* v. *DeLaney Forge & Iron Co.*, 205 U. S. 354:

> "Whether a state lien statute, otherwise constitutional, applies to vessels not to be used in the

> waters of the state; on whose credit the supplies were furnished; whether the lien was properly filed as to time and place, and what the effect thereof is as to *bona fide* purchasers without notice, are not Federal questions, but the judgment of the State Court is final and conclusive on this court."

In order to determine whether the facts existed which would give rise to an attorney's lien, it became necessary for the State Court to find what occurred in the Federal Court. But these findings of fact by the State Court, though they necessarily involved an inquiry as to the procedure in the Federal Court, did not raise a Federal question. The vital question is as to the applicability of the state statute to the facts thus found. As was said by this court in *Miller's Executors* v. *Swann*, 150 U. S. 132:

> A state may prescribe the procedure in the Federal Courts as the rule of practice in its own tribunals; it may authorize the disposal of its own lands in accordance with the provisions for the sale of the public lands of the United States; and in such cases an examination may be necessary of the acts of Congress, the rules of the Federal Courts, and the practices of the Land Department, and yet the questions for decision would not be of a Federal character. The inquiry along Federal lines is only incidental to a determination of the local question of what the state has required and prescribed. The matter decided is one of state rule and practice.
>
> The facts by which that state rule and practice are determined may be of a Federal origin.

For other cases holding that when it appears from the record that the decision of the state court turned upon the construction and not the validity of a state law, and that

the question of its validity was not raised, this court has no jurisdiction, see

Grand Gulf R. R. & Banking Co. v. *Marshall*, 53 U. S. 165.

Commercial Bank v. *Buckingham*, 5 How. 317.

Sage v. *Louisiana Board of Liquidation*, 144 U. S. 647.

Robertson v. *Coulter*, 16 How. 106.

Respectfully submitted,

EDWIN A. KRAUTHOFF,
Attorney and Counsel for Defendant in Error.

UNION PACIFIC RAILROAD COMPANY v. LAUGHLIN.

ERROR TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

No. 662. Argued April 18, 1918.—Decided May 20, 1918.

A state statute giving an attorney a lien on the cause of action or its proceeds for an agreed portion of any recovery, and rendering the actual or proposed defendant directly liable to him for its satisfaction in case of settlement after notice without his consent, does not deprive the party thus made liable of any constitutional right, even where the settlement is made under a judgment recovered upon the cause of action through another attorney in the federal court, and by satisfying such judgment by payment to the clerk of that court.

A contrary contention raises no substantial federal question.

So held where the cause of action (for personal injuries) arose in another State.

Writ of error to review 196 Mo. App. 541, dismissed.

THE case is stated in the opinion.

Mr. N. H. Loomis, Mr. R. W. Blair and *Mr. I. N. Watson*, for plaintiff in error, submitted.

Mr. Edwin A. Kreutheff for defendant in error.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

Xeden, a section hand on the Union Pacific Railroad, was injured, in Kansas, while in the performance of his duties. Laughlin, an attorney at law, was employed by him in Missouri to prosecute and settle his claim against the company; and Xeden agreed that Laughlin should receive as compensation one-half of whatever amount he

might obtain in settlement of the claim. The Revised Statutes of Missouri (1909), §§ 904 and 905, authorizing such agreements, give to the attorney a lien on the cause of action and on the proceeds, if notice of the lien is duly given to the defendant or "proposed defendant"; and, as construed by the Supreme Court of Missouri,[1] they also provide that if, after such notice, the claim is settled in any manner without first procuring the written consent of such attorney, the defendant or "proposed defendant" shall be liable to the attorney in an independent suit to an amount equal to that for which he held the lien.

Laughlin gave to the company this statutory notice. Later and without his consent, Xedes brought, through other counsel, in a state court, suit against the company which was removed to the District Court of the United States for the Western Division of the Western District of Missouri, and judgment was entered therein for $550. The company paid this amount to the clerk of court in satisfaction of the judgment; and it was paid by him to Xedes and his new counsel. When Laughlin learned these facts, he brought suit against the company in Missouri before a justice of the peace, for $275, and recovered a judgment therefor which was affirmed in the state circuit court and again by the Kansas City Court of Appeals. A rehearing applied for in June, 1917, was denied by that court, which also refused to transfer the case to the Supreme Court. The company, contending that the Federal Constitution has been violated, brings the case here under § 237 of the Judicial Code as amended.

It does not appear here, as it did in *Dickinson* v. *Stiles*, 246 U. S. 631, that the suit of the employee against the railroad was brought under the Federal Employers' Liability Act; and no claim is made that the attorney's lien

[1] *O'Connor* v. *St. Louis Transit Co.*, 126 Mo. 632, 645; *Taylor* v. *St. Louis Transit Co.*, 203 Mo. 715, 730; *Wait* v. *Atchison, etc. R. R.*, 205 Mo. 491, 501.

statute of the State is inconsistent with that law or the constitutional provision concerning interstate commerce. The company's contention, as set forth in its assignment of error in this court, is that the decision below takes its property and denies to it equal protection of the law in violation of the Fourteenth Amendment, because the decision imposes a liability not imposed by the judgment recovered by Kodis in the federal court; deprives it of the protection afforded by the acts of Congress to those who pay to the clerks of the United States District Courts money in satisfaction of judgments entered therein;[1] and gives to two attorneys fees for the same service. The defendant in error moves to dismiss on the ground that the case does not present a federal question reviewable under § 237 of the Judicial Code as amended by the Act of September 6, 1916, c. 448, 39 Stat. 726, because there is not drawn in question the validity of a statute of or an authority exercised under any State on the ground of their being repugnant to the Constitution, treaties or laws of the United States; and that if such question is presented, the Kansas City Court of Appeals was not "the highest court of a State in which a decision in the suit could" have been had, since the Supreme Court of Missouri has appellate jurisdiction in cases where "the validity of a treaty or statute of or authority exercised under the United States is drawn in question," and no application was made to that court for any action taken by it.

The Missouri statute simply gives a means of action against one who, with knowledge of the existence of a lien, destroys it. To grant such a remedy against the wrongdoer clearly does not deprive him of any right guaranteed by the Federal Constitution, even if the in-

[1] Rev. Statutes, §§ 828, 837, 846, and § 846 as amended by Act of February 19, 1897, c. 265, § 2, 29 Stat. 536, and Act of March 3, 1911, c. 231, 36 Stat. 1088; Act of August 1, 1888, c. 728, §§ 1 and 2, 25 Stat. 357.

statement by means of which the wrong is accomplished happens to be the judgment of a federal court. No substantial federal question is involved. We have no occasion, therefore, to consider whether the validity of the Missouri statute was drawn in question (*Philadelphia & Reading Coal & Iron Co.* v. *Gilbert*, 245 U. S. 162); nor whether "a decision in the suit" might not have been had in the Supreme Court of Missouri, (*Missouri, Kansas & Texas Ry. Co.* v. *Elliott*, 184 U. S. 530).

Writ of error dismissed.